United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 110th CONGRESS, SECOND SESSION

Vol. 154 WASHINGTON, FRIDAY, JANUARY 25, 2008 *No. 12*

House of Representatives

The House was not in session today. Its next meeting will be held on Monday, January 28, 2008, at 2 p.m.

Senate

FRIDAY, JANUARY 25, 2008

The Senate met at 9:30 a.m. and was called to order by the Honorable SHELDON WHITEHOUSE, a Senator from the State of Rhode Island.

The PRESIDING OFFICER. Today, retired Navy Chaplain Dr. Alan Keiran, the chief of staff of the Senate Chaplain's Office, will lead the Senate in prayer.

PRAYER

The guest Chaplain offered the following prayer:

Let's pray together.

Lord God, on this anniversary of Saint Paul's conversion, we are reminded of the positive impact people of faith have made in human history. So we ask that You equip all of us with the wisdom, strength, and perseverance needed to overcome any obstacles we will face in serving this Nation and its citizens.

Bless our Senators with opportunities to advance democracy, justice, and economic parity. Bless their staff members as they labor to support the honorable men and women they serve.

For military men and women deployed in harm's way, and their families, we pray Your providential protection, comfort, and peace.

O Lord, our precious Saviour and eternal King, equip leaders across this great land with the wisdom and endurance to meet the challenges ahead.

In Your holy Name we pray. Amen.

PLEDGE OF ALLEGIANCE

The Honorable SHELDON WHITEHOUSE 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, January 25, 2008.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable SHELDON WHITEHOUSE, a Senator from the State of Rhode Island, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. REID. Mr. President, the Senate will resume consideration of S. 2248 as soon as I leave the floor. This is the FISA legislation. There will be no rollcall votes today. As a reminder, Senators have until 1 p.m. today to file germane first-degree amendments to the Rockefeller substitute.

FISA

Mr. REID. Mr. President, as I said twice yesterday—and I will just say it briefly this morning—Democrats believe there are a lot of bad people out there and that there should be some form of collecting information over the telephone. But we believe it should be done in an orderly way in keeping with our Constitution. It appears, based on Republican actions yesterday, they want no controls whatsoever on the President. They want exactly what he has been doing now, which is violating the law.

Mr. President, we have offered a 2-week extension of the bill, a 30-day extension, a 15-month extension. If this bill that we have now before us is not enacted, it is not because of Democrats, it is because the Republicans, in conjunction with Vice President CHENEY and the President, have made some determination that there should be no FISA legislation.

I, frankly, do not think that cloture will be invoked Monday afternoon. That being the case, it is virtually legislatively impossible to do anything by February 1. Remember, the House is out of session all but 1 day next week.

So the record should be very clear, we believe there are very bad people out there. We believe there should be some way of collecting information. But we believe, as does the vast majority of the American people, it should be collected in some way that is within the bounds of our Constitution.

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

RECOGNITION OF THE MINORITY LEADER

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

FISA

Mr. MCCONNELL. Mr. President, let me respond briefly.

I think it is a little early in the session to begin the finger-pointing. We have here—I had hoped—a good, sort of bipartisan start to the session. The facts are that we have a bill before us, the Rockefeller-Bond bill, that we know will get a Presidential signature and protect the homeland. That is before us. We have an opportunity, on Monday, by invoking cloture, to pass a bill that we know will become law.

So I hope we do not sort of get back into the pattern that sort of underscored the early part of the first session of the 110th of just sort of endless finger-pointing and game-playing. I filed a cloture motion because I knew this was a bill that would get a signature. This is something that could become law. And if the House acted rapidly, it would become law before the deadline—a great bipartisan accomplishment.

We have that opportunity Monday. I hear my good friend and counterpart saying cloture will not be invoked, so I assume it will not be invoked. But I think that is a great mistake. This would have been a wonderful way to begin the session with a high point of bipartisan cooperation.

HONORING OUR ARMED FORCES

CORPORAL JOSHUA M. MOORE

Mr. MCCONNELL. Mr. President, I rise to speak about a young Kentuckian who was taken from this world entirely too soon. CPL Joshua M. Moore of Lewisburg, KY, was lost in Baghdad while serving our country. He was 20 years old.

In the early morning hours of May 30, 2007, Corporal Moore was driving a humvee when an improvised explosive device set by terrorists went off. The force of a 55-gallon drum of homemade explosives overturned the humvee and tragically took Corporal Moore's life.

For his valor in uniform, Corporal Moore received numerous medals and awards, including the Bronze Star Medal and the Purple Heart. His family saw him laid to rest in Lewisburg, in Logan County, KY, with full military honors, including a 21-gun salute and a flyover of military aircraft.

Corporal Moore's funeral service was held at Lewisburg Elementary School, where Josh had attended years before and where he returned every time he came home on leave to speak to the young students about his life of service as a soldier.

This remarkable young man, who did not live to see 21, believed it was important to describe the honor of fighting to defend one's country with the young children in his hometown.

''He has set a good example for the young kids around here. A lot of kids looked up to Josh. He will be missed greatly,'' says his mother, Carolyn.

Josh worried what to say about the reality of war to kids as young as 7 years old. But his father, Seymore, encouraged him to talk about the dedication a soldier must have. He told him to describe the rigorous physical training, the strange new places he saw, and the new friends he made.

After Josh would return to Iraq, the students he had met would write him letters to read the next time he came home. ''He sat and read these—every one of these before he went back,'' said Seymore.

Surely to Carolyn and Seymore, it seems like just yesterday when Josh was a child himself. When he was 3 years old, Josh found his dad's old Cub Scout uniform and wore it all the time. He even insisted on wearing it in his preschool picture—against his mother's better judgment.

After attending Lewisburg Elementary, Josh went on to Lewisburg Middle School and Logan County High School and was a consistently strong student. He played basketball at Lewisburg Middle, became a Babe Ruth baseball all-star, and made the Logan County High baseball team—all despite the fact that, at 5 foot 6, his friends teasingly called him ''Little Moore.''

As important as sports were to Josh, however, this young man learned early the importance of patience. When he was almost 16, Josh wanted to buy a new car. His parents offered to help pay up to $500. But Josh had his eye on a neighbor's car, a burgundy Pontiac Grand Am with a $1,500 pricetag.

Carolyn and Seymore told Josh he would have to come up with the rest of the money, so he quit high school sports and got a part-time job. Two weeks before his 16th birthday, Josh approached his parents and slapped $1,000 onto the coffee table. He said, ''Here is my part. Where is yours?'' That Grand Am was his by his 16th birthday.

Josh graduated from Logan County High in 2005 and hoped one day to join the Kentucky State Police. But after working for a short time at a factory, one day Josh came home to his family and announced, ''I am the property of the U.S. Government.''

''They are going to shave your head,'' Josh's mother said.

''They have to leave an inch of hair,'' replied Josh.

His parents were nervous for their son and suggested he try a different branch of the service. A relative in the Navy offered to help.

But Josh was not interested. ''Josh wanted to be where the action was,'' says Seymore, and to him that meant serving as an infantryman in the U.S. Army. ''No matter what he did,'' Carolyn adds, ''he wanted to be the best.''

Josh did his basic training at Fort Benning, GA, and graduated among the top 20 soldiers in his class. Of the many things he learned there, one was the ability to say when he had been wrong. And in a letter to his mom, Josh admitted, ''I am bald.''

Corporal Moore was assigned to C Company, 1st Battalion, 18th Infantry Regiment, 1st Infantry Division, based out of Schweinfurt, Germany. In addition to Germany and Iraq, Corporal Moore saw service in Kuwait.

While in the Middle East, a lieutenant asked Josh's commanding officer who his smartest and quickest soldier was, and the officer said Corporal Moore, thinking Josh would receive an award. Instead, the lieutenant made Josh a radio operator.

At first Josh thought he had been demoted. But his old drill sergeant told him this was an honor, as communications were critical to the unit. After this pep talk, Josh assumed his new role with relish.

The lieutenant who selected him later told Josh's family that when Josh was away on leave, it was hard on the unit because no one else could meet the high standard he set for the job.

This wonderful Kentucky family is in my thoughts and prayers today as I recount Josh's story. He is loved and remembered by his mother, Carolyn Moore; his father, Jeff ''Seymore'' Moore; his brother, Richard Pierce; his sisters, Carrie Cantarelli and Ashley Moore; his grandparents, Jeanette Rose and David and Barbara Knight; his girlfriend, Amber Miles; and many other beloved friends and family members.

Corporal Moore's funeral service was held at Lewisburg Elementary School, the only place in Logan County large enough to hold the hundreds—hundreds—who came to pay their final respects.

Ronnie Forrest, Josh's pastor for many years, from Lewisburg's Mount Pleasant Baptist Church, expressed best how this young man inspired so many in his short time on this Earth.

This is what he said: Josh ''didn't want to die, he didn't intend to die, but he was willing to lay down his life.'' Pastor Forrest said at the service: ''That's what a hero is.''

No words that Mr. Forrest could say, I could say, or anyone could say will fill the void in the hearts of Josh's family and friends. But I hope the knowledge that those who knew Josh saw him for what he was—a hero—fills them with pride. And I am proud to recount his story for my fellow Senators.

Today, this Senate expresses its deepest gratitude for CPL Joshua M. Moore's service. He laid down his life for his country, his loved ones, and his young pen pals from Lewisburg Elementary. We will forever honor that sacrifice.

I yield the floor.

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

Mr. REID. Mr. President, I certainly join with my friend from Kentucky in

the respect we show for this young man.

IRAQ

Mr. REID. Mr. President, we have lost about 4,000 soldiers in Iraq. Thirty-five thousand have been wounded. About a third of them have been grievously wounded. As we know, about 40 percent of the men and women coming back from Iraq have what is now called—we used to call it, after the Second World War, shell shock. Now they call it post-traumatic stress syndrome.

I just wrote a letter to the Nevada parents of a young man who was killed. I have done that lots of times. I was unable to speak to them, and that is why I wrote the letter. Most of them I try to visit. But the family has been split up a little bit, and it was not possible for me to do that.

Mr. President, I hope we can figure out a way to get our troops home soon. General Petraeus said the war cannot be won military, and every day that goes by that is proven certainly so. The Iraqi Government has nothing to move toward a settlement of this situation. There are far too many stories like Josh.

I hope we can work on a bipartisan basis on many matters. We hope, for this package which is coming from the House maybe sometime next week dealing with the stimulus, that we can work on a bipartisan basis. From all accounts I got yesterday, that, in fact, will be the case. Senators BAUCUS and GRASSLEY, who have jurisdiction of 85 or 90 percent of the potential matters that go into the bill, have indicated they are going to have a bipartisan markup next week, and hopefully we can take a look at that piece of legislation in a bipartisan way and get it to the President as quickly as possible. There are many other things we have to work on, on a bipartisan basis, and I look forward to that.

I say with all due respect to my friend—and he is my friend—the Republican leader, that one thing the President has done and done very well these past years is frighten the American people, and it appears we are entering into another zone of frightening the American people. It started a couple of days ago with the Vice President, and the President followed him by a day, and we have the State of the Union coming. It is obvious that this FISA bill—which I hope something works out so it can be passed, but unless there is a way to amend it, it certainly doesn't appear that it is going to be. The President's State of the Union and certainly leading up to it will, again, frighten the American people. The best way to take that away is for the President to work with us. Are we asking for the impossible?

There have been efforts to amend this FISA legislation. In title I, there are probably five or six amendments we would want to vote on. Title II, which deals with immunity, Senators DODD and FEINGOLD for a long time have said they wish to have a vote on that. That is not unreasonable. Many of us support that. I can't imagine why we can't move forward on that, unless this is something the President wants to ratchet up so that he has something to frighten the American people about on Monday night when he gives his State of the Union, that we are not protecting the American people. We are protecting the American people, just as this young man, Josh, was, whom the Republican leader talked about. I wrote a letter, as I indicated, to the Gaul family a couple of days ago.

We need to enter into a new era of bipartisanship where we are not frightening the American people but we are trying to work with the American people, to move out of some of the areas in which we find ourselves bogged down. I hope this year will allow us to do that.

MEASURE PLACED ON THE CALENDAR—S. 2556

Mr. REID. Mr. President, I understand S. 2556 is at the desk and due for a second reading.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title for the second time.

The legislative clerk read as follows:

A bill (S. 2556) to extend the provisions of the Protect America Act of 2007 for an additional 30 days.

Mr. REID. Mr. President, I object to any further proceedings with respect to this bill at this time.

The ACTING PRESIDENT pro tempore. Objection is heard. The bill will be placed on the calendar.

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

FISA

Mr. MCCONNELL. Mr. President, just one further observation with regard to my friend's remarks.

The Bond-Rockefeller bill is exactly the way we ought to be doing our business. It came out of the Intelligence Committee 13 to 2. It is supported on a bipartisan basis. It is supported by the President of the United States. We have a product that was carefully negotiated by Senator BOND and Senator ROCKEFELLER, approved by the Intelligence Committee 13 to 2, and supported by the President of the United States. That is my definition of a bipartisan accomplishment. Now the question is, Can we finish the job and get a signature?

This is not about frightening the American people. The American people should be frightened, and remember full well what happened on 9/11. They also remember with gratitude that it has not happened again for 6 years. The reason for it, obviously, is we have been on offense, going after the terrorists where they are, and we have improved our defense.

An integral part of protecting the homeland is the measure before us, carefully crafted on a bipartisan basis, supported by the President of the United States. If we want to finish the job and have a bipartisan accomplishment that all of us can be proud of, the way to do that is to pass this bill, send it to the House, urge them to take it up and pass it, and send it to the President, who awaits it to affix his signature.

I yield the floor.

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

Mr. REID. Mr. President, there is no question that Senator ROCKEFELLER and Senator BOND have worked hard on this legislation. Also, we have had good work from Senator LEAHY and Senator SPECTER of the Judiciary Committee. Senator ROCKEFELLER wants a piece of legislation to pass very badly. He does not support cloture in this effort that is going to take place on Monday because he believes the bill needs to be changed. Just because there is a bill that comes out of committee doesn't mean we shouldn't deal with it here on the floor. Senator ROCKEFELLER is not going to support cloture on this bill on Monday. It is a decision he made, and he has made it because we have not had the opportunity to do things to this piece of legislation that he believes should happen. It is a rare piece of legislation that comes out of one of these major committees that comes to the floor that doesn't require some improvement.

So it is simply unfair to say that Senator ROCKEFELLER and Senator BOND's piece of legislation should go through as if it were written in script on top of some big mountain. It was written in a committee room with a lot of discussion and votes, and some of the amendments passed, some didn't. It came to the floor. We all are happy it came to the floor. But at this time, even Senator ROCKEFELLER believes there should be changes in it, and he will not support cloture, as he told me last night, because he feels it has been handled so poorly by the minority here on the floor.

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

FISA AMENDMENTS ACT OF 2007

Mr. BOND. Mr. President, we are on the FISA bill, I believe. Has the bill been reported? Is it before us?

The ACTING PRESIDENT pro tempore. It has not yet been reported.

The clerk will report the pending business by title.

The legislative 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.

Feingold/Dodd amendment No. 3909 (to amendment No. 3911), to require that certain records be submitted to Congress.

Bond amendment No. 3916 (to amendment No. 3909), of a perfecting nature.

Reid amendment No. 3918 (to the language proposed to be stricken by Rockefeller/Bond amendment No. 3911), relative to the extension of the Protect America Act of 2007.

IRAQ

Mr. BOND. Mr. President, I wish to address the FISA bill. I also commend our majority and minority leaders on their statements about the lives that have been lost by our brave troops in Iraq and Afghanistan.

I believe there are a couple of comments that are appropriate.

Number 1, it was said that General Petraeus said the war is not going to be won militarily. That is the key point which General Petraeus has brought to the battle. There is a kinetic and nonkinetic impact of the counterinsurgency strategy that General Petraeus has laid out and that is showing such great progress in Iraq.

Today, the news is not dominated by Iraq. Those people who have been criticizing it don't talk about it because General Petraeus's strategy is working. It is not just the surge; it is the strategy, the counterinsurgency strategy, or COIN, as it is sometimes called. That involves clearing, holding, and building.

There is a real difference between the approach we took right after the fall of Saddam Hussein, which has been haphazardly called the ''whack a mole'' theory—we would go out, send our troops out, trying to keep a small footprint. We would also send our troops out where there was an al-Qaida stronghold and try to suppress them, and then we would leave. The problem is that al-Qaida would come back, and they would take vengeance on anybody thought to have cooperated. That strategy, apparently pushed by those who felt it would be—we wanted to maintain a small footprint and not appear to be taking an occupier's role—was not working.

General Petraeus expanded upon the usual doctrines of counterinsurgency, and he brought a new approach beginning over a year ago. He said: We will send in troops to clear areas, working with the Iraqi security forces. When they clear an area, they will stay there to maintain security—that is clear—and then hold. And holding involves the U.S. forces working with the Iraqi security forces to train them, to provide them intelligence, logistics, medical support, to ensure that they can sustain the peace and the security in the area. Once they do that, then the U.S. Government has come in either with aid in dollars or with the work of the troops in the field to help build the infrastructure to provide the services, whether it is health care, whether it is reparations for damages, and show the Iraqi people that we want to turn over that country to the Iraqi security forces to maintain the stability and security which is necessary for the long-term process of establishing a democracy.

I was there with a group of my colleagues from the Senate Intelligence Committee in early May, and we were seeing the beginnings of the effectiveness of that strategy. We went into Al Anbar Province. Six months before, it had been regarded as the headquarters of al-Qaida. They were in control. It was their area. It was a Sunni area. The only way the American troops could get into the capital of Ramadi was to fight their way in, and then they would usually have to withdraw. But on this occasion, four of us went in, in a Cougar, with the commanding general of the region and two marines. We drove into the center of Ramadi, got out, and walked around Firecracker Corner—so-called because of the continuing firefights going on there previously—and we went to visit the embedded American marines with the Iraqi Army, who had bunked there, and the Iraqi police who were serving that area. They live together, they work together, they train together. You know something. It was working.

We even went out to see the Blue Mosque, one of the holy places for the Sunni in Al Anbar Province, which had been badly hurt by gunfire, by artillery and rockets and bombs. The marines had gone in and helped repair and clean up the Blue Mosque, so it was open for worship again.

The Iraqis began to understand that we would work with their security forces to help them take control of the area, and that is what they were doing. It continued to get better. I know personally from reports I had from one marine there, the scout snipers found that by midsummer, their services were not necessarily needed in Al Anbar because if somebody planted an IED—an improvised explosive device—or a terrorist came to town or somebody set up a vehicle factory to build explosive vehicles, the Iraqi Sunni watch told the Iraqi security forces, and they went and took care of it. The Iraqi Sunni police took care of it. This continued to spread throughout Al Anbar.

Now, one of the helps—quite honestly, everybody will admit that one of the things that made it so easy for us to work with the Sunnis was that al-Qaida had shown their true colors. They are terrorists first, second, foremost, and last. They went in and they terrorized the people, even the people who at first were cooperating with them because they thought they were Sunni brethren. Well, they were not. They went in and had forced marriages, rape, pillage, murder, torture. They disrupted the activities, the business activities of the Iraqi Sunni leaders in the area, and they quickly learned that al-Qaida was not their friend and they needed us there temporarily to help them take control of their country. That is what we are doing. It is not done all over. There are still areas where we have not been able to provide Iraqi security forces sufficient training, sufficient personnel to take control of the area.

Now, the majority leader said: We want to bring our troops home as soon as possible. As one who supported the war, I agree with him wholeheartedly. I had a personal stake in it. I wanted to see our troops come home. But as the President said, we need to return on success. We need to bring those troops home when they have succeeded in their missions. because as several men on the ground who have seen their comrades killed said: We have made too many contributions and too many sacrifices to see a political defeat declared by Congress, forcing us to withdraw, so that those contributions and sacrifices will be for nothing.

When you ask the American people do they want to see the troops come home, sure, they do; we all do. But we want them to come home and not leave Iraq in chaos and to return on success. That is where the American people are. And they are returning on success. The 2/6 Marines cleared Al Anbar and came home several weeks early. General Petraeus says more will be coming home. But we have a vital stake in making sure Iraq does not fall back into chaos and confusion.

We have laid the groundwork. There is much more political work to do at the national level, but political reconciliation is occurring from the ground up. The Shia in Baghdad are beginning to recognize they must provide financial assistance and support to the Sunnis. Recently, the Iraqi Parliament passed a reform of the debaathification law, which put out of the Government anybody who had been associated with Saddam Hussein. It was probably a bad idea that our original U.S. coalition commanders had to fire all the Iraqi soldiers and send them home with no pay, no jobs but their weapons; to throw out of office all the former Government bureaucrats who worked for Saddam Hussein. They are going to have to move carefully but quickly to get those people back who know how to make government run.

General Petraeus has said that as we continue to build these forces—the forces of peace who can run the Government—we will bring our troops home. We have been in Germany and Korea for decades. We have been in Kosovo for years. We need to have a minimal presence there, probably for a long time. But the primary responsibility of maintaining peace and security in Iraq is being turned over and must be turned over to the Iraqi security forces. We can back them up and make sure al-Qaida doesn't make another run at them, doesn't bring in external fighters. These are the ones causing the most trouble, people coming in from Syria, or Saudi Arabia through Syria, and other areas—the terrorists. We have the ability to assist the Iraqi security forces to do that.

Why is it so important we leave Iraq secure and stable? Well, Saddam Hussein was a real threat to us. Even

though he did not actually have any weapons of mass destruction that we could find, we know he used them. We know he had the ability to restart at any time and that he had attempted to begin a nuclear weapons program. Most of all, he had a country where terrorists were running wild. We heard a lot about Abu Mus'ab al-Zarqawi, of Ansar al-Islam, the infamous butcher who delighted in decapitating people for television. His group became al-Qaida in Iraq. Fortunately, we killed him. He and other terrorists were running loose in Iraq. They were waiting to get their hands on weapons of mass destruction.

With the decline and decapitation of the Saddam Hussein regime, we made it much less likely the Government was going to provide weapons of mass destruction. But that was what the Iraqi survey group said was the greatest danger, that made Iraq far more dangerous than we knew, because with Saddam Hussein in control, terrorist groups running wild in a chaotic country could have provided the weapons of mass destruction the terrorists seek, and continue to seek, to use against our allies, our troops abroad and us here at home.

If the place falls into chaos, there is likely to be broad-ranging genocide among the parties in Iraq, settling old grievances. That could bring other countries into the region, starting a regionwide civil war. But the most important thing is Osama bin Laden and Ayman al-Zawahiri, his No. 2 man, said the purpose of their struggle is to establish the headquarters of their caliphate at the land of the two rivers. That is Iraq, Baghdad and Ramadi. They want to get their hands on the oil resources. If they have unfettered access for establishing camps to recruit, train, develop weapons, issue command and control, then we in this Nation are much less safe. Return on success, yes. The 2/6 Marines have come back and others will come back on success. That is the strategy we have now and it is the right one.

Mr. President, I needed to say that.

FISA

It is now important to talk about FISA. I am glad we are on the floor. I think, as the majority leader has said, all first-degree amendments need to be filed by 1 o'clock this afternoon. We are available to do business and we look forward to working with our colleagues to see if we can make this happen in a timely fashion.

I believe it is important this morning, for the RECORD and for the benefit of my colleagues and the American people, to clear up several things mentioned in yesterday's consideration of the FISA bill. When I say ''FISA,'' I mean the Foreign Intelligence Surveillance Act—the act that authorizes the President and the intelligence community to use electronic signals collection to get information on terrorist enemies and other threats to the United States.

First, I will state the obvious. Yesterday, we had a very positive result in the Senate. The Senate Judiciary Committee substitute to the Senate Intelligence Committee bill failed on a clear vote. I believe the Members of this body recognized it was a partisan, unworkable, inadequate bill. It was written without any consultation with the intelligence community or the lawyers who know how FISA works and how signals intelligence is carried out. It was done without the participation of any of the Republican members of the Judiciary Committee, and it failed.

Chairman ROCKEFELLER and I have, as has been said, a bipartisan bill worked out over a number of months, as the occupant of the chair knows so well. We worked long and hard. We didn't always agree, but we came to a bill that passed 13 to 2.

There were two problems with the bill—a good idea but unworkable as introduced. So we worked with the sponsors of that provision and had a very good idea that we need to protect American citizens, when they are abroad, from warrantless surveillance. It took 24, 25 pages to work out the details for it. But I believe that provision we now have in the managers' amendment, the pending amendment before us on this bill, accomplishes the purposes all of us on the committee support.

I voted against the original proposal in the committee because I didn't think it was workable, but we have fixed that, and I am proud to support it.

These are the fixes Chairman ROCKEFELLER and I put together, with the help of Senator WYDEN and the occupant of the chair, so we now have a functional, working amendment. The drafting has been fixed, and I believe we have a much better bill. We have an improvement over the original FISA bill and the Protect America Act, which was a necessary short-term extension that allowed the continuation of electronic intercepts against foreign targets overseas, without having a court order, which was absolutely necessary because the change in the technology in electronic communications had put too many of the overseas collections, which used to be outside the scope of FISA, within the scope of FISA.

The Protect America Act had a lot of nasty things said about it yesterday. They were all wrong. What the Protect America Act did not do, however, involves two very important things the Senate Intelligence Committee did. By a 13-to-2 vote, we added the protection for American citizens overseas. It is very important. It added other protections as well. It also said those companies, the carriers that may have worked with the intelligence community in adopting or effectuating the collection of signals intelligence against terrorists planning attacks in the United States, should not be sued in civil court. That provision—protecting any private sector entities that cooperated but not Government officials from lawsuits—was necessary to end a string of lawsuits brought by opponents of intelligence collection who want to destroy the system, who seek money damages but who really seek to harass and drive communication companies out of the business of cooperating with intelligence officials.

If they are successful, if they can drive and harass and bludgeon private sector entities from cooperating with intelligence officials, then our country will be significantly less safe. Those of us who have been on the Intelligence Committee heard the discussion that there are threats that continue to be raised and that this world is still a dangerous place. We need to be able to find out what our enemies are planning. We cannot have the entire Nation as fortified as the Capitol grounds and the White House grounds. We have a free and open country. Our only hope of being safe is to identify planned terrorist attacks before they occur.

So what we have before us today is a workable, bipartisan bill. It is supported by the Director of National Intelligence. I will refer to Admiral McConnell as the DNI, the head of that agency, and the President would sign it into law. We started with a solid bipartisan update to FISA that is needed to protect the country to increase civil liberty protections and protections for the privacy rights of Americans. We should now all heed the first law of responsible leadership, and that is, first and foremost, do no harm with any amendments to be considered in the bill.

I hope my colleagues will think long and hard before offering amendments, to make sure they have no unintended consequences and that they do no harm.

One good way to do that is to talk with the intelligence community. Talk with the office of the DNI, talk with the Department of Justice. If you have a good idea, talk with them. Maybe there is a way your objectives can be achieved without interfering with the ability to collect information. If you don't, if things are offered that would significantly impair our intelligence community's ability to collect the vitally important intelligence we need to have, then I will have to oppose it and I will urge my colleagues to oppose it.

We constructed a delicate, bipartisan compromise that is a good bill. I hope we will refrain from trying to deconstruct it or try to make the bill worse in any way before final passage. The American people want to have well-regulated intelligence collection that keeps the country safe, and they deserve no less.

That brings us to where we are today. Senator FEINGOLD yesterday offered an amendment over which the Department of Justice expressed real concerns. I understand those concerns, so I offered a second-degree amendment that gives the Senator from Wisconsin three-quarters of what he sought, yet refrains from mandating that the executive branch provide Congress with

pleadings containing very sensitive sources and methods submitted to the FISA Court. I will refer to that court as the FISC, the Foreign Intelligence Surveillance Court.

Three months ago in a committee compromise, I agreed to include the provisions of the Senator from Wisconsin in our bill, which calls for the opinions, orders, and decisions of the FISC prospectively, and in my second-degree amendment, I propose to go further and agree with him to accept his mandate to require the community to go back 5 years to dig up all the past orders and opinions which are of significant consequence but go back and find all those and give them to us.

We have received in the Intelligence Committee, on a semiannual basis, the reports of FISC, orders and opinions of significance, and they have been available for review by our staff for each 6-month period. But we will order them to go back and provide them. I am not sure what he is digging for, but I think we are willing to work with him. It will be a burden on the community, but I think that is information that might arguably be useful to those of us with oversight responsibility.

I am not willing to agree to mandating that pleadings be turned over, and my second-degree amendment eliminates them from his mandate. It also stipulates that this mandate would be levied with due regard to sensitive sources and methods.

Even though I believe this mandate for tranches of documents, truckloads perhaps, puts a tremendous burden on officials in the Department who have already given us semiannual reviews, since now they will have to go back and find, produce, screen, redact, and submit them to Congress, I am willing to work with the Senator from Wisconsin and others to include them up to the point of pleadings. I hope this will be viewed as a reasonable compromise.

Regrettably, instead of working with me on this issue, the Senator from Wisconsin attacked my efforts to reach a compromise saying ''a ridiculous notion and disrespectful of the United States Congress.'' I was accused of ''hiding behind a tragedy in this country to make arguments that have no merit'' and trying to help the intelligence community ''prevent the Members of Congress from seeing the pleadings provided to an article III court.''

These insinuations are not only inaccurate, but I believe they come close to violating debate rule XIX of the Senate, which says:

> No Senator in debate shall, directly or indirectly, by any form of words impute to another Senator or to other Senators any conduct or motive unworthy or unbecoming a Senator.

I do not believe the accusations against me were appropriate in the debate. They only underscore the divisive and partisan intentions behind some of the efforts we are seeing on the floor, and I hope we can avoid future such accusations.

I will restate for the record my reasons for eliminating pleadings from the required submission to the intelligence communities. These are not policy documents, policy of which the Intelligence Committee said: We don't like the policy of where you are going. These are not broad issues for legislative implementation. They are detailed analyses of sources and methods for collecting intelligence. They are submitted to the article III judge sitting at that time as the FISC judge to provide a basis for a warrant based on probable cause to allow electronic surveillance of persons within the United States, U.S. persons.

It is possible those pleadings would include, No. 1, the name or other identifying features of the sensitive sources who provided the intelligence information they set forth. That could risk getting somebody killed. They could provide the identification and location of the collection facility. They could provide information on the means of collection. They would obviously have to provide information on the target and other relevant information.

In the intelligence business, these are the ultimate sources and methods. They are highly classified because, if they were to leak out, there would be very serious harm done to individuals and perhaps even locations where collection occurs.

So I believe the intelligence community has a legitimate reason for saying we are not going to share the sources and methods that identify the names of the individuals, the sources. I do not see that is a necessary element of our oversight, to know Joe Doe was the one who gave us the information on Ralph Roe and they needed to get the information through facility X using means Y. That is kept at a closely compartmental level.

We have already in the bill that Senator ROCKEFELLER and I have been able to forge with great bipartisan support a solid compromise piece of legislation, and that is the model on which we should move ahead.

Today we have heard again some accusations that the minority side—my side—is stalling this important legislation. A quick review of the FISA legislation history over the past year is in order.

The President declared he was bringing the surveillance program under FISA in January of 2007, 1 year ago. In April of last year, because of some changes in court orders, the DNI asked us to modernize FISA so it would be compatible with new technology. On May 1 of last year, he testified in open session before our committee and again he asked us to modernize FISA. Shortly thereafter, we were informed in the Intelligence Committee about the ruling of the FISC that altered the collection ability of that program, to the point where our intelligence agencies were shut down with regard to vital intelligence collection that would protect us.

What was the response of our Intelligence Committee? Regrettably, nothing. We did absolutely nothing. I urged that we act, that we move forward on it, but our committee and Congress did nothing.

Through May, June, and July of last year, the DNI's pleadings to modernize FISA grew stronger. After he came before our committee in May, he came before Members of the Senate in closed session in our confidential, secure hearing room. Over 40 Members were there, and he told us in July it was absolutely essential we move, that everybody said it was essential we move. We did not move until the final week, and we still did not have a committee hearing.

I brought the DNI's bill, the Protect America Act, to the floor on Wednesday, before we had a vote on it on Friday. There were comments yesterday about how partisan and secret and one-sided the negotiations were, but it was not our efforts for the support of the DNI that were secret and one-sided. There were secret negotiations on the majority side prior to the passage of the Protect America Act.

Several committee chairmen got together, shutting out Republicans and shutting out members of the Intelligence Committee from any consideration of their proposals. They were not vetted with the Director of National Intelligence.

The DNI has been accused of going back on his word. I managed to get in finally at the end of some of those negotiations, and I can tell you that the DNI said he will go back and check with his lawyers on these issues. He did not agree to incorporate the changes that were suggested and, as suspected, when he viewed some of the proposals, he found they were unworkable.

We never saw the bill the committee leaders on the majority side proposed to offer until less than an hour before it appeared on the Senate floor—before we were voting, actually, when it appeared on the Senate floor.

During that time, the majority and minority members of the Intelligence Committee asked me for more information about the Protect America Act. I had a session in my office for members of the committee, bipartisan, going over with the DNI what the details of the Protect America Act were.

Fortunately, on a bipartisan basis, we approved the Protect America Act. It was a stopgap. It was meant to serve for 6 months, but it got us back in the business of collecting vital signals intelligence. That is where we needed to be. We were not there.

That was on August 3. Fortunately, on August 4, the House passed the bill, and on August 5, the President signed it, and we were back in business collecting information on new targets who were coming up on our screen.

Because of the need to add a 6-month sunset, which I agreed with all parties on both sides was a good idea, that 6-month sunset expires in 1 more week.

It expires next Friday. Knowing that this law would soon expire, when the Senate returned from the August recess in September, the Intelligence Committee began working on a new FISA bill, and after 6 weeks of constant work, deliberations, compromise, extensive discussions among staff, with staff, the members, with the DNI—and the occupant of the chair knows how much time and effort went into that—we produced the carefully crafted compromised legislation before us today on a 13-to-2 vote out of the committee.

This is a model for the law we should pass in the Senate, a bipartisan product. The majority leader tried to bring up this bill in December before the recess, and I commend him for it. But majority Senators filibustered the bill.

Make no mistake about it, the majority stalled FISA last month and filibustered the bill. At that time, the majority leader made a commendable plea to his colleagues. He stated any amendment offered to this bill, in view of its delicate nature and the bipartisan compromise it represents, should be required to meet a 60-vote threshold to clear any procedural hurdles in the Senate. This would also ensure it remained a bipartisan product.

If we look at the history of the important legislation we passed, it passed this past year with 60 votes—60 votes—to ensure there will be a bipartisan bill. Neither party can pass something alone, without bipartisan compromise—getting 60 votes. The Protect America Act required 60 votes: That is how it was brought to the floor. The partisan majority committee leader's bill came to the floor with a 60-vote requirement and it failed. We got the Protect America Act by meeting the 60-vote threshold.

Sixty votes, for those who may be following this elsewhere, is what is needed to invoke cloture to shut off a filibuster, but it is a good principle when you have a very contentious, important, and technical bill.

I commended the majority leader for his leadership and agree wholeheartedly with him now. In fact, if he were able to follow through with that offer now, then we would have already passed FISA last night. The fact is there is a majority of Senators who will not give their consent for such an agreement. They would prefer to deconstruct the Senate Intelligence Committee compromise and, by simple majority vote, transform the bill before us into a partisan product, thus gutting the bipartisan support—and the DNI's support, I would add—in this important legislation. That is little bit shortsighted, I believe.

If a majority can be mustered to undo the important compromises worked out with the intelligence community, with the DNI, you can go through the act of passing the bill, but it is not going to be signed, and the monkey is going to be back on our back. We have an opportunity to pass a bill here that can be signed into law to keep our country safe. If we want to be in the situation where we were last summer, where our intelligence community was effectively deaf and blind to terrorist threats, then go ahead and tear up this bill, take it apart, leave it with no support from the intelligence community. And, by definition, if it is not supported by the intelligence community, it will not be signed into law by the President.

I am asking that we go back to the procedure we followed before in passing the Protect America Act, that we used in passing other important pieces of legislation, and make it a bipartisan effort. The people of this country are crying out for bipartisanship. We got the Protect America Act on a bipartisan basis. We passed a bill out of the Senate committee that far exceeded the 60-percent test. We need to deal with this bill under the same rules. Gutting the bill with a bare majority, and plurality, as could happen under the current situation, is a bad approach. I say to my colleagues that if they can agree to a 60-vote threshold for all amendments offered, then we can start voting on any and all of them right now, and we will go through them. There are some very important amendments, and there are very good arguments for those amendments. I hope my arguments on the other side are better. But we have to deal with this on a 60-vote basis. What I am not willing to do right now, and our minority leader is not and our side of the aisle is not, is to allow this bipartisan product to be dismantled on the Senate floor by partisan efforts that make FISA unworkable, loses the DNI's support because it won't work, and thus the President's signature. It makes for good politics but it fails to protect America.

If the majority will work with us, then we are happy to have any and all amendments. I know the leaders may still come up with an agreement of that sort, but barring that, I don't see a way around this because we are not going to accept, by majority vote, a jumbled-up structure that leaves the intelligence community without the ability effectively, efficiently, and within proper constitutional and statutory restrictions to collect the intelligence we need to keep this country safe. We have to have a good bill. We have incorporated far more protections in the Senate substitute than have ever been in FISA before, and I think those of us on the Intelligence Committee, the occupant of the chair, can take great credit for protections we have added.

National security is not red or white, it is red, white, and blue. The blues and the reds need to work together on this, passing a product the DNI supports so the President will sign it into law. Anything else and we are not helping the country. We are ready to consider amendments; we simply don't want to see the bill destroyed through partisan ploys.

Mr. President, seeing no other Senators present, I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. CHAMBLISS. Mr. President, I would inquire as to what the pending business is before the Senate.

The ACTING PRESIDENT pro tempore. S. 2248, the Foreign Intelligence Surveillance Amendments Act.

Mr. CHAMBLISS. I thank the Chair, and I rise to support the managers' amendment on this piece of legislation as proposed by Chairman ROCKEFELLER and Vice Chairman BOND. This is the result of a bipartisan discussion which included the Office of Director of National Intelligence and the Department of Justice. I commend Senator ROCKEFELLER and Senator BOND on drafting this complicated yet critical piece of legislation.

The Senate has had a healthy debate while considering the Judiciary Committee's substitute amendment. I was pleased to see a majority of the Senate reject that bill, and I hope the Senate can now move past that flawed bill rather than offering a number of amendments which contain fragments of it. There is no benefit to rehashing the same points in the Senate bill that was just handily tabled versus the Rockefeller-Bond compromise piece of legislation that came out of the Senate Intelligence Committee.

The Director of National Intelligence, the National Security Agency, and the Department of Justice have stated their opposition to a number of proposed amendments which were part of the failed Judiciary Committee's substitute. The DNI has made it clear he would recommend to the President that he veto this legislation if it does not contain immunity for communication carriers, and rightly so. Some Members offered amendments to strike title II from the managers' amendment or to substitute the Government as the defendant in these lawsuits.

But substitution will not give the carriers protection, nor will it protect our national security. The plaintiffs can still seek documents and other evidence from them through the discovery process at trial. This risks exposing our intelligence sources and methods, and there is simply no doubt about that fact.

The Government can assert the states secrets privilege, but the ongoing litigation has shown that courts reject this theory. Even the FISA Court, which operates in secret and handles classified information, is not suited to handle these cases. The FISA Court primarily reviews ex parte requests and was not meant to hear regular trials.

The members of the FISA Court are sitting district court judges and have their own full dockets.

The risk of unnecessarily exposing some of our most sensitive collection if litigation continues is too great. The best remedy is to provide immunity to the telecommunication providers as the managers' amendment does. Other amendments propose unnecessary additions to provisions already included in the managers' amendment. For example, the managers' amendment contains a 6-year sunset and an exclusivity provision. Yet amendments have been offered to make this legislation expire in 2 years or 4 years.

Additionally, an amendment has been offered to state that absent some other expressed order from Congress, FISA and title XVIII are the exclusive means to conduct electronic surveillance. This would require Congress to pass a law authorizing the President to conduct electronic surveillance after an attack on our country.

What if Congress were not able to meet, let alone agree on language authorizing electronic surveillance after an attack on our country? This amendment ignores longstanding debate regarding article I and article II powers, a debate the courts have dodged time and again. I support the bipartisan language in the managers' amendment which maintains the status quo of this important constitutional question.

Finally, an amendment has been offered requiring an audit of the terrorist surveillance program. As I stated earlier in comments yesterday, the Intelligence Committee has conducted a thorough review of this program over many months, which included testimony, extensive document reviews, and even trips out to our intelligence agencies to witness how this program is operated.

I understand that sometimes partisanship impedes action in Congress. But I do not recall when some of my colleagues have had such little faith in the bipartisan findings and conclusions of a committee in this body.

This amendment disregards the committee's finding and asks for yet another retrospective review of this program. This is not only duplicative, but it is unnecessary. The Protect America Act expires a week from today; the threat from al-Qaida will not expire a week from today.

It is now time for Congress to act and to fix FISA so our intelligence community has the tools it needs to do its job in a very professional manner and gather information necessary to protect our national security.

Protecting our national security is in the interest of all Americans, and Congress should seek to ensure that our Nation is protected fully. The members of the intelligence community say the managers' amendment contains many tools they need to protect our country. I urge my colleagues to support the managers' amendment.

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

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

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

ECONOMIC STIMULUS

Mr. DODD. Mr. President, I had earlier this morning intended to spend a few minutes talking about the stimulus package that was at least agreed to between the leadership of the other body and the administration, a matter that will be coming here and the Senate will have an opportunity to express its will on that matter.

But I wanted to speak on it for a moment, at least as Chairman of the Senate Banking Committee that will have at least a small part of that discussion, because of the inclusion of the FHA proposals as well as the loan limits within the GSEs, which I commend the administration for including. These are critical elements.

We must, of course, deal with people's problems. But is something else again to deal with the problems that have caused people's problems. In my view, the deeper problem is the foreclosure crisis. That is the underlying issue, in my view, and therefore to have dealt with a short-term stimulus package that did not include some measures and steps that would address the housing issue and the foreclosure issue would have been shortsighted. So I was pleased to see that in addition with some rebates and refundable tax assistance, even to those who have very limited incomes, as well as assistance to those with young children and families. All are wonderful ideas.

I know Senator BAUCUS, who will have the bulk of the responsibility in the Finance Committee for dealing with this, along with others who want to add elements of dealing with such things as unemployment insurance or food stamps or low-income energy assistance and the like, will have some additional thoughts on this short-term package. But I felt it was important to express some optimism about the direction it is going in and to note how important it is for consumers and investors to begin to have their confidence restored.

FISA

Mr. DODD. Mr. President, I rise this morning to continue the debate and discussion on the Foreign Intelligence Surveillance Act. Let me underscore the point that Majority Leader REID and others have made. I listened carefully to the comments of Senator MCCONNELL, the distinguished Republican leader.

I have served in this body for more than a quarter of a century now, and it is unfortunate that we seem to have come to a point where not as much is happening as should be happening, in my view.

I brought committee products to the floor on many occasions, and I am sort of envious of the remarks of the Senator from Kentucky—because as a committee chairman, I love nothing more than to bring a product out of my committee. Many times I brought them out with unanimous votes, only to have to spend days here on the floor as amendment after amendment was being offered to change, in some cases dramatically, the substance of our bill, which we had worked on for weeks and months and years in some cases.

So it is a new idea here to just accept committee product and say the other 90 or 85 Members should respect the work of our colleagues, and acknowledge that and pass the legislation as if we had all had some input here. That is unique and, I suppose, an idea that most of us would like to embrace at one point or another. But this is the Senate. This is not an operation that runs by fiat.

This institution has an historic responsibility. In this institution, every single Member has the opportunity to express themselves, not only rhetorically for unlimited amounts of time, but also with the ability to contribute to the policy products we frame. To suggest that other Members, including members of a committee that had commensurate jurisdiction, the Judiciary Committee, ought to be excluded from adding their thoughts and ideas, is ridiculous. Even members of both Committees, Judiciary and Intelligence, are excluded, such as Senator FEINGOLD. It was his amendment, as a member of both of these committees, that the Republican leadership would not even consider debating or acknowledging with a vote. So that is unique in any regard. Anyone who has observed this institution for more than an hour—or less—understands how this works.

So the idea that we should accept this bill because the President will sign it, is nice to hear, but I have been around long enough to know that Presidents will sign things they did not think they would in time, and particularly if we can add some thoughts that Members have.

I do not want to dwell on the procedural aspects of all of this, but I wanted to underscore the point that Senator REID, our leader, the majority leader, made this morning, on the unique idea that Members who have substantive ideas and thoughts and amendments should somehow stick them back in their pockets, accept the product of the Intelligence Committee and go home, because the President will sign that bill. I will be anxious to raise the argument in future dates when I bring a bill to the floor and I find that the Republican leadership is going to offer some amendments to my

ideas, reminding them of their eloquence in suggesting a different approach to the Foreign Intelligence Surveillance Act.

Last night, we saw into the heart of the minority's priorities. Since last month, day after day, opponents of retroactive immunity have been warning about its underlying motive: shutting up the President's critics. Pass immunity, we have said, and the debate will be shut down, the critics will be shut up, and the actions of the President's favored corporations will be shut in the dark for good.

Last night, we saw the mindset of the minority. Several of my Democratic colleagues have brought to the floor their carefully prepared amendments, many of which do their part to right the balance between security and civil liberties.

The Cardin amendment, which would allow us to revisit the bill in 4 years instead of 6, not exactly a frightening proposal. It would be a simple debate; we could decide if he's right or wrong—make your case either way. I happen to believe he is right. Amendments from Senator FEINGOLD prohibiting the dangerous and possibly unconstitutional practice of reverse targeting and bulk collection. The Leahy amendment, requiring the inspectors general of the Director of National Intelligence and the Department of Justice and the National Security Agency to investigate possible illegal domestic spying. The Feinstein-Nelson amendment allowing the FISA Court to determine whether immunity should apply to the telecommunications companies; and several more amendments as well.

These are all very serious amendments. The Presiding Officer himself has one of these amendments. Some of them I support, others I would probably end up opposing. Nonetheless, I acknowledge the seriousness of their proposals.

I am concerned, however, about amendments that expand the authority of the FISA Court beyond what Congress intended when it originally passed FISA. While I respect the motives behind such proposals, Congress needs time to fully consider their implications.

Further, I am concerned that such proposals put excessive power in the hands of a secret court whose members are all appointed by one individual. In other words, I am concerned this is yet another concentration of power, the implications of which we don't fully understand and ought to consider carefully. Yes, secrecy is necessary at times in the life of every nation. But it is a bedrock principle that democracy should always err on the side of less secrecy. For that reason I believe cases against the telecoms are best handled in our standard Federal courts—which, by the way, have shown time and time again that they know how to protect State secrets.

None of that is the real issue this morning. Whether you agree with any of these proposals or not, each amendment deserves consideration. Senators are not entitled to see their amendments agreed to, but they are entitled to this: a good-faith debate, honest criticism, and, ultimately, a vote on their ideas. Last evening, they didn't get that. Our Republican colleagues, assuming they would lose those votes, effectively shut down the work of the United States Senate. In the words of the cliche, they have taken their ball and run home.

I don't think that is far off base, in seeing in this egregious shutdown a parallel to retroactive immunity itself. Both attitudes privilege power over deliberation, over consensus, over honest argument. Like immunity, pulling these amendments down shows a contempt for honest debate and a willingness to settle issues in the dark, in the back rooms, rather than in the open, where the law lives, where the American people can see it.

President Bush wants to shut down the courts whose rulings he doesn't like. Last night, Senate Republicans showed when they don't like the outcome of a debate, they shut down that as well. It is one thing for a President to express that kind of contempt for the process of legislation. It is yet another for the coequal Members of this legislative branch to express it themselves.

I have spoken repeatedly about the rule of law. The rule of law is not some abstract idea. It is here with us. It is what makes this body run and has for more than two centuries. It means we hear each other out. We do it in the open. And while the minority gets its voice, its right to strenuously object, the majority ultimately rules. Standing for the rule of law anywhere means standing for it everywhere—in our courts and in the Senate.

The circumstances are different, of course, but the heart of the matter is the same. Last evening, I believe the Republican Party forfeited its claim to good faith on this issue. They are left to stake their case on fear. Whether that be enough, the next few days will tell.

But I want to talk about the issue of the underlying bill, the substance of it. As my colleagues here know, I care deeply and passionately about several aspects of this bill. Again, I have great respect for the work it takes to strike the balance between the need for have surveillance of those terrorists who would do us great harm, and the protection of civil liberties, rights, and the rule of law. It is not an easy balance. I will be the first to acknowledge that the tension between those two goals has been an ongoing tension since the founding of this Republic. It is not just new since 9/11. It goes back to the very first days of our Republic.

In fact, James Madison spoke eloquently about the tensions in civil liberties and rights and, with a great deal of prescience, recognized that it is usually threats from outside our country that have the most influence on endangering the rights and liberties we embrace at home. He acknowledged that more than two centuries ago.

So the debate we are engaged in today is a historic one, historic in the sense that it has been ongoing. No Member of this Chamber wants to sacrifice the security of our country, and my hope is that no Member of this body wants to sacrifice our liberties and rights either. I want to believe that very deeply. While we are debating how best to do that, my fear is that we are about to adopt legislation that will deviate from a 30-year history of actually achieving that sense of balance, by and large with the almost unanimous support of Members who have served here during that 30-year period.

I spoke yesterday about a crime that may have been committed against millions of innocent Americans: their phone calls, their faxes, their e-mails, every word listened to, copied down by Government bureaucrats into a massive database. I spoke about how our largest telecommunications companies leapt at the chance to betray the privacy and the trust of their own customers. That spying didn't happen in a panic or short-term emergency, not for a week, a month, or even a year. It went on relentlessly for more than 5 years. If the press had not exposed it, it would be going on at this very hour. This was not a question where a program started up and someone realized they had done something wrong, shut it down, and we discovered it later. This program has been ongoing and would have been ongoing arguably for years had the New York Times and a whistleblower not stepped forward to acknowledge its existence.

We saw how President Bush responded when this was exposed—not by apologizing, not even by making his best case before our courts, but by asking for a congressional coverup: retroactive immunity. He asked us to do it on trust. There are classified documents, he says, that prove his case beyond a shadow of a doubt, but, of course, we are not allowed to see them. I have served in this body for 27 years, and I am not allowed to see these documents! Neither are the majority of my colleagues.

And when we resist his urge to be a law unto himself, how does he respond? With fear. When we question him, he says we are failing to keep the American people safe.

Shame on the President and shame on these scare tactics.

I have promised to fight those tactics with all the power any one Senator can muster, and I am here today to keep that promise. For several months I have listened to the building frustration over this immunity and this administration's campaign of lawlessness. I have seen it in person, in mail, online—the passion, the eloquence of average citizens who are just fed up with day after day, week after week,

month after month, year after year of this administration, in one case after another, trampling all over the basic rights of American citizens. They have inspired me more than they know, these citizens who have spoken up.

But almost every time telecom immunity comes up, there is the inevitable question: What is the big deal? Why are so many people spending so much energy to keep a few lawsuits from going forward?

Because this is about far more than the telecom industry. This is about a choice that will define America—the rule of law or the rule of men. It is about this Government's practice of waterboarding, a technique invented by the Spanish Inquisition, perfected by the Khmer Rouge, and in between banned—originally banned for excessive cruelty even by the Gestapo.

It is about the Military Commissions Act, a bill that gave President Bush the power to designate any individual he wants as an unlawful enemy combatant, hold him indefinitely, and take away that individual's right to habeas corpus, the centuries-old right to challenge your detention.

It is about the CIA destroying evidence of harsh interrogation—or, as some would call it, torture.

It is about the Vice President raising secrecy to an art form.

The members of his energy task force? None of your business, we are told.

His location? Undisclosed.

The names of his staff? Confidential.

The visitor log for his office? Shredded by the Secret Service.

The list of papers he has declassified? Classified.

It is about the Justice Department turning our Nation's highest law enforcement offices into a patronage plum and turning the impartial work of indictments and trials into the machinations of politics.

It is about Alberto Gonzales coming before Congress to give testimony that was at best wrong and at worst perjury.

It is about Michael Mukasey coming before the Senate and defending the President's power to break the law.

It is about extraordinary renditions and secret prisons.

It is about Maher Arar, the Canadian computer programmer who was arrested by American agents, flown to Syria, held for some 300 days in a cell 3 feet wide, and then cleared of all wrongdoing.

It is about all of that. We are deceiving ourselves when we talk about the torture issue or habeas issue or the U.S. attorneys issue or the extraordinary rendition issue or the secrecy issue. As if each one were an isolated case! As if each one were an accident! We have let outrage upon outrage upon outrage slide with nothing more than a promise to stop the next one.

There is only one issue here—only one—the law issue. Attack the President's contempt for the law at any point, and it will be wounded at all points. That is why I am here today. I am speaking for the American people's right to know what the President and the telecoms did to them. But more than that, I am speaking against the President's conviction that he is the law. Strike it at any point, with courage, and it will wither.

That is the big deal. That is why immunity matters—dangerous in itself but even worse in all it represents. No more. No more. This far, Mr. President, but no further.

More and more Americans are rejecting the false choice that has come to define this administration: 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.

The truth, I would say, is that shielding corporations from lawsuits does absolutely nothing for our security. I challenge the President to prove otherwise. I challenge him to show us how putting these companies above the law makes us safer by one iota. That, I am convinced, he cannot do.

The truth is that a working balance between security and liberty has already been struck. It has been settled for decades. For three decades, the Foreign Intelligence Surveillance Act has prevented executive lawbreaking and protected Americans, and that balance stands today. In the wake of the Watergate scandal, the Senate convened the Church Committee, a panel of distinguished Members, Republicans and Democrats, determined to investigate executive abuses of power. Unsurprisingly, they found that when Congress and the courts substitute ''trust me'' for real and true oversight, massive law breaking can result. They found evidence of U.S. Army spying on the civilian population, Federal dossiers on citizens' political activities, a CIA and FBI program that opened hundreds of thousands of Americans' letters without warning or warrant.

In sum, Americans had sustained a severe blow to their fourth amendment right to be ''secure in their persons, houses, papers, and effects against unreasonable searches and seizures.'' But at the same time, the Senators of the Church Committee understood that surveillance needed to go forward to protect the American people. Surveillance itself is not the problem: unchecked, unregulated, unwarranted surveillance was. What surveillance needed, in a word, was legitimacy. In America, as the Founders understood, power becomes legitimate when it is shared; when Congress and the courts check the attitude which so often crops up in the executive branch: If the President does it, it is not illegal.

The Church Committee's final report, ''Intelligence Activities and the Rights of Americans,'' puts the case powerfully. Let me quote, if I can, from that report. The Church Committee—Republicans and Democrats—said:

> 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. . . .

The report further states:

> 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 concluded:

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

That report is more than 30 years old. But couldn't those words have been written this morning? We share so much with the Senators—Republicans and Democrats—who wrote them. We share a nation under grave threat—in their case, from communism and nuclear annihilation; in ours, from international terrorism. We share, as well, the threat of a domestic spying regime that, however good its intentions, finally went too far.

Senators in my lifetime have already faced this problem, and I believe their solution stands: The power to invade privacy must be used sparingly, guarded jealously, and shared equally between all three branches—all three branches of Government.

Three decades ago, Congress embodied that solution in 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.

The President's own Director of National Intelligence, Mike McConnell, explained the rationale in an interview this summer: The United States, he said: ''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 many times over the last three decades, FISA has accomplished its mission. It has been a valuable tool—a tremendously valuable tool—for conducting surveillance of terrorists and those who would harm our country.

Every time Presidents have come to Congress openly to ask for more leeway under FISA, Congress has worked with them; Democrats and Republicans have negotiated; 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 agents, even if those conversations are routed through American computers. For other reasons, I felt this summer's legislation went a bit too far, and I opposed it. But the point is that Congress once again proved its willingness to work with the President on FISA.

Shouldn't that be enough?

Just this past 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 could do nothing to slow down intelligence gathering.

Shouldn't that be enough?

And as for the FISA Court? Between 1978 and 2004, according to the Washington Post, the FISA Court approved 18,748 warrants—18,748 warrants. It rejected five, between 1978 and 2004. Let me repeat the numbers. They granted 18,748 warrants, and rejected 5 of them over that almost 30-year period.

The FISA Court has sided with the executive 99.9 percent of the time.

Shouldn't that be enough? One would think so. Is anything lacking? Have we forgotten something? Isn't all of this enough to keep us safe?

It took three decades, three branches of government, four Presidents, and 12 Congresses to patiently, painstakingly build up that machinery. It only took one President to tear it down. Generations of leaders handed over to President Bush a system that brought security under the law, a system primed to bless nearly any eavesdropping he could possibly conceive or think of. And he responded: No, thank you; I'd rather break the law.

He 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. And he still has not given us a good reason why. He still has not shown how his lawbreaking makes us safer.

So I am left to conclude that, to this President, this is not about security. It is about power: power in itself, power for itself.

I make that point not to change the subject, but because I believe it solves a mystery. That is: Why is retroactive immunity so vital to this President? The answer, I believe, is that immunity means secrecy; and secrecy, to this administration, means power.

It is no coincidence that the man who declared ''if the president does it, it's not illegal''—Richard Nixon—was the same man who raised executive secrecy to an art form in an earlier generation. The Senators of the Church Committee expressed succinctly the deep flaw in the Nixonian executive. I quote from them: ''Abuse thrives on secrecy.'' And in the exhaustive catalog of their report, they proved it.

This administration shares a similar level of secrecy, and a similar level of abuse, I would add. Its push for immunity is no different. Secrecy is at its center. We find proof in their original version of retroactive immunity. Remember, this was their idea: a proposal not just to protect the telecoms but everyone involved in the wiretapping program. That is what they sought of the Intelligence Committee. Everyone involved in that program was to be protected. 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, immunity for the Executive is not part of the bill before us. But the original proposal—the original proposal—to immunize everyone involved ought to be instructive to Members here. Why did they seek such broad authority to immunize every individual? Why? What was behind that proposal? This is, and always has been, a self-preservation bill.

Otherwise, why not have the trial to get it over with? If the President believes what he says, the corporations would win in a walk. After all, in the administration's telling, the telecoms were ordered to help the President spy without a warrant, and they patriotically complied.

Read Justice Robert Jackson's briefs after Nuremberg. The 21 defendants at Nuremberg made that case, that they were only complying with orders they were given. And the court in the Nuremberg trials, in 1945, rejected that argument. Robert Jackson reminded us, in subsequent decisions he handed down as a Supreme Court Justice, that that argument, ''we were ordered to do it,'' is not a legitimate defense when you know what you are doing is wrong.

And when you hear the President's story, ignore for a moment that in America we obey the laws, not the President's orders. Ignore that the telecoms were not unanimous; one, Qwest, wanted to see the legal basis for the order. They never received it, of course, and so they refused to comply. Ignore that a judge presiding over the case ruled that—and I quote—''AT&T cannot seriously contend that a reasonable entity in its position could have believed that the alleged domestic dragnet was legal.''

Ignore all of that. If the order the telecoms received was legally binding, they have an easy case to prove. 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 five 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?

It can't be that he is afraid of leaks. The 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, as well.

No intelligence sources need to be compromised. No state secrets need to be exposed. And after litigation at both the district court and circuit court level, no state secrets have been exposed.

In fact, Federal District Court Judge Vaughan Walker, a Republican appointee, I might add, has already ruled 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 hardly a secret at all. I quote from him. He stated:

> The government has [already] disclosed the general contours of the ''terrorist surveillance program,'' which requires the assistance of a telecommunications provider.

That is from Judge Walker. 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.

That is Republican appointee Vaughan Walker speaking to the administration. He further goes on to say:

> 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.

That ought to be the epitaph of this administration: sacrificing liberty for no apparent enhancement of security. Worse than selling our soul, we are giving it away for free.

The President is equally wrong, I would suggest, 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 is more, it immunizes them. It has 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. The conclusion, I again repeat, is clear: The only thing that stands to be exposed if these cases go to trial is the extent of the President's lawbreaking, of the administration's lawbreaking. That, he will keep from the light of a courtroom at all costs.

This is a self-preservation bill. And given the lack of compelling alternatives, I can only conclude that self-preservation—secrecy for secrecy's sake—explains the President's vehemence.

Well, you might say, he will be gone in a year. Why not let the secrets die with this administration and start afresh? Why take up all the time on this matter?

Because those secrets never rightfully belonged to him. They belong to history, to our successors in this Chamber, to every one of us. Thirty years after the Church Committee, history repeated itself. If those who come after us are to prevent it from repeating again, they need the full truth. We need to set an unmistakable precedent. Determining guilt or innocence belongs to the courts, not to 51 Senators who may carry the day by a vote here, or the President, for that matter—that is what the courts are for. Lawless spying will no longer be tolerated. And, most of all, the truth is no one's private property.

Which brings us, unfortunately, to economics. Because once the arguments from state secrets and patriotic duty are exhausted, immunity's defenders make their last stand as amateur economists.

Here is 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.

To begin with, that is a clear exaggeration. We are talking about some of the wealthiest, most successful companies in America. Let me quote an article from Dow Jones MarketWatch. The headline reads: ''AT&T's third-quarter profit rises 41.5 percent.'' I will quote the article:

> 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 $3.6 billion . . . compared with $2.17 . . . a year ago.

I should note that AT&T has posted these record profits at the same time of this very public litigation.

Now, granted, that is only one quarter, and I understand that AT&T's most recent earnings aren't as large as the ones I have just quoted; but I think the point still stands. A company of that size, capable of posting a $3 billion quarter, couldn't be completely wiped out by anything but the most exorbitant and unlikely judgment.

To assume that the telecoms would lose and that their judges would hand down such backbreaking penalties is already taking 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 has begun talking like a stockbroker, pronouncing on ''liability protection for private sector entities.'' How does that even begin to be relevant to letting the case go forward? Since when did we throw out entire lawsuits because the defendant stood to lose too much?

Translate the point into plain English, and here is what Admiral McConnell is arguing: Some corporations are too rich to be sued. Even bringing money into the equation puts wealth above justice, above due process. I have rarely in public life heard an argument as venal as this one.

But this administration would apparently rather protect the telecoms than the American people. In one breath, it can speak about national security and bottom lines. Approve immunity, and Congress will state clearly: The richer you are, the more successful you are, the more lawless you are entitled to be. A suit against you is a danger to the Republic. So at the rock bottom of its justifications, the administration is essentially arguing that immunity can be bought.

The truth is exactly the opposite, in my view. The larger the corporation, the greater potential for abuse. Not that success should make a company suspect at all. 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. After all, if everything alleged is true, the President and the telecoms have engineered one of the most massive violations of privacy in American history. A violation such as that would be inconceivable without the size and resources of a corporate behemoth behind it.

If reasonable search and seizure means opening up 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.

Ultimately, that is all I am asking—not a verdict of guilty or innocent. I have my own views, but I don't have a right to pronounce those views. That is why there is something called the third branch of Government. It is called the courts—the courts. A simple majority of this body doesn't get the right to decide the guilt or innocence in this particular case. But when the day in court comes, I have absolutely no investment in the verdict either way. Just as it would be absurd for me to declare the telecoms clearly guilty, it would be equally absurd to close the case today without a decision. But their day in court, as far as I am concerned, is everything.

Why? Because surveillance demands and deserves legitimacy, and the surest way to throw legitimacy away is to leave all of these questions hanging.

Few things are as vital to our national security as giving domestic surveillance the legitimacy it deserves and needs to sustain public support. Because ''the threat to America is not going to expire.'' ''Staying a step ahead of the terrorists who want to attack us'' is ''essential to keeping America safe.'' In the end, ''Congress and the President have no higher responsibility than protecting the American people from enemies who attacked our country and who want to do it again.''

Those aren't my words; they are George Bush's words. He says all of this, yet he says he will veto the entire bill—this vital bill, this bill which is essential to protecting our very lives—all to keep a few corporations safe from lawsuits.

There, at last, as honest as you will ever hear them, are this President's true priorities: secrecy over safety, favors over fairness. Marry those priorities to a contempt for the rule of law, and the results have been devastating. I don't have to repeat them. They aren't secret anymore.

No, Mr. President we can't go back. We can't un-pass the Military Commissions Act. We can't un-destroy the CIA's interrogation tapes. We can't unspeak Alberto Gonzales's disgraceful testimony. We can't un-torture those who have been apprehended and held wrongfully. We can't undo all this administration has done in the last 6 years for the cause of lawlessness and fear.

But we can do this: We can vote down this immunity. We can do this: We can grab hold of the one thread left to us here and pull until the whole garment unravels. We can start here.

And why not here? Why not today?

Why not provide for the protections we need, the surveillance we need, but without this grant of immunity? It is unwarranted, it is unneeded, it is unfair, it is wrong, and it is dangerous.

So, on Monday, I hope my colleagues will reject the motion on cloture, allow these amendments to go forward, allow us to have a debate and a discussion, and then send a clean bill to the President—one that enhances our security and protects our civil liberties.

Mr. President, I yield the floor.

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

Mr. ALEXANDER. Mr. President, I ask unanimous consent to speak as in morning business.

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

Mr. ALEXANDER. I ask unanimous consent that when I finish with my remarks, the Senator from Texas be recognized.

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

REPUBLICAN RETREAT

Mr. ALEXANDER. Mr. President, I would say to the Senator from Connecticut, welcome back. We are glad to have him here. He has traveled some roads that I know pretty well. We have missed some of his vigor and passion.

Sometimes the American people say they don't like to see us engage in partisan bickering, and I am going to say something about that in just a minute. But what I think they do like to see us do, if I may say so, is what the Senator from Connecticut was doing just then and what the Senator from Arizona did on Friday: They were debating the balance of each American individual's right to liberty versus each American individual's right to security—coming to different conclusions but having a serious discussion about an issue that affects every single American in this country. That is what the people expect of the Senate.

I come to a different conclusion than he does. We are moving to vote on cloture on a bill on Monday that has come out of the Intelligence Committee by a bipartisan majority of 13 to 2. But this is the kind of debate the Senate ought to have, and I am glad I got to hear his speech even though I disagree with much of it.

The Republican Senators gathered in a retreat at the Library of Congress on Wednesday. This is something we do each year, and the Democratic side does it each year as well. We think about our responsibilities, and we look forward to the future. Many of our Members have said to me that this was one of our best days of retreat. In the first place, it was very well attended: 44 out of 49 of us were there, and 3 of those absent were campaigning in Florida, and 1 was ill. So we had virtually perfect attendance. Most of those attending spoke and participated and made proposals. Every single Republican Senator with whom I have talked since that meeting on Wednesday has told me he or she felt rejuvenated and looks forward to this year. I believe the reason for that is because of the way we conducted the day.

It takes me back to what I just said a moment ago. Unless we are tone-deaf, I think we can hear what the American people are saying to us, especially through the Presidential campaign, which is that they are tired of the way we are doing business in Washington, DC, and they want us to change it. They want us to take the playpen politics and move it off the Senate floor and put it in the national committees or in the nursery where it belongs, and spend our time on big issues that affect our country—maybe in vigorous debates of the kind Senator DODD and Senator KYL would have on the intelligence bill, but spend our time on the serious issues facing our country. Then, after we have had our debate, work across the aisle to get a result.

There are only two reasons to work across the aisle to get a result. One is, it is the right thing to do for our country. This is our job, and that is why they pay us our salaries. That is why they sent us here. No. 2, if you can count, it takes 60 votes to get anything meaningful done in the Senate. So if you want to get a result, you have to work across party lines because neither side has more than 60 votes.

So what we Republicans did on Wednesday was say this: We have heard the talk that this is a Presidential year and we may get nothing done in Congress, and we reject that.

Our leader said—MITCH MCCONNELL—on Tuesday when he spoke:

> Republicans are eager to get to work on the unfinished business from last year. We are determined to address the other issues that have become more pressing or pronounced since we last stood here. We have had a presidential election in this country every 4 years since 1788 we won't use this one as an excuse to put off the people's business for another day.

So there is no excuse for Congress to take this year off, given the serious issues facing our country. We want to change the way Washington does business, and we know how to do it; that is, get down to work on serious issues facing our country, propose specific solutions that solve problems, and then work across the aisle to get a result. We are not here to do bad things to Democrats; we are here to try to do good things for our country.

That was the spirit of our retreat on Wednesday. I believe that is the way most Members on the other side feel. The more of that we do, the better. I would submit the approval rating of the Congress and of Washington, DC, will gradually go up if we were to do that.

Let me say a word about exactly what we talked about on Wednesday—the kind of approach that one can expect from Republican Senators this year.

First, of course, is that we are here and ready to go to work on these specific solutions based on Republican principles, and we are either looking for bipartisan support or already have bipartisan support on many issues. Of course, to begin with, we know Americans are hurting and anxious because of the housing slump, because of gasoline prices, because of rising health care costs, and we are ready to work with the House and the President, across the aisle, to find the appropriate action to take to try to avoid an economic slowdown.

I imagine the Senate will have some of its own views about its proposals when the House brings its proposal here. But we want a result. I, for one, would like to see—and I believe most of my colleagues on this side of the aisle would like to see—a proposal that grows the economy and not the Government. But we will have a debate about that. That is not partisan bickering; that is the Senate in its finest tradition addressing an issue that is central to every single family in this country.

We know we need to intercept the communications of terrorists so we can keep our country safe from attack. We know when we do that, we have to carefully balance each of our right to liberty versus each of our right to security.

Samuel Huntington, the Harvard professor, once wrote—he was President of the American Political Science Association—that most of our politics is about conflicts between principles or among principles with which almost all of us agree. That is important to Americans because what unifies us, other than our common language, is these few principles, security and liberty being two.

Republicans support the Rockefeller-Bond bipartisan proposal which passed 13 to 2 by the Intelligence Committee. We want to make sure those companies which help us defend ourselves aren't penalized for helping to make the country secure, while at the same time protecting individual liberties.

We know there are 47 million Americans who don't have health insurance, and Republican Senators said in our retreat on Wednesday that we are ready to go to work this year to make sure every American is insured. Some say put it off a year. Well, perhaps we can't get it all done in 2008, but we can surely start. Senator BYRD and Senator DEMINT and Senator BENNETT and Senator CORKER, among others, spoke at our retreat on this issue. We would like to get going now. We could begin with the Small Business Health Insurance Act, which would permit small companies to pool their resources and offer more health insurance at a lower cost to their employees. That would be a beginning.

Many of us on the Republican side have sponsored a bipartisan bill—one of two or three that have the same general approach to reforming the Tax Code, to put cash in the hands of American families and individuals so they can afford to buy their own private insurance, putting together four words that usually don't go together: ''universal access'' and ''private insurance.'' Those are based on principles we Republicans agree with: free market and equal opportunity. We know on this side of the aisle—and I suspect many over on that side know as well; I know they do—if we don't do something about the runaway growth of Medicare and Medicaid—entitlement spending, in other words—we will bankrupt our country. Every year that we wait to deal with that is a year that makes the solution harder.

So Senator GREGG, at our retreat, talked about his proposal with Senator

CONRAD, a Democratic Senator, to create a base-closing-task-force-type task force for the sole purpose of recommending to the Congress a way to control entitlement spending and force an up-or-down vote on that. That is the principle of limited government. That is a principle that most Republicans and a proposal that many Democrats can support.

We know there is a great force in Washington, DC, to spend more money, to issue more regulations and rules, and there are almost no countervailing forces to spend less money, repeal rules, and revise regulations. So Senators DOMENICI, ISAKSON, and SESSIONS, among others, have proposed an idea to change our budgeting and appropriations process from 1 year to 2 years. That may help us get appropriations bills done on time so we can save money in our contracting in the Defense Department and Department of Transportation, for example. But more important to me, and to many on this side of the aisle, it would create a countervailing force of oversight so that every other year we would spend most of our time on oversight, meaning we could review, repeal, and change and improve laws, regulations, and rules that have been in place for a long time.

We want to keep jobs from going overseas, and we believe we know how to do it. Last year, we worked with Senator BINGAMAN and others on the other side to pass the America COMPETES Act. This is an extraordinary response to our challenge to keep our brain power advantage so we can keep our jobs, in competition with China and India. Senator HUTCHISON has been a leader on this issue. She, with Senator BINGAMAN, began the effort to fully fund advanced placement courses so more children could take those courses. So we are ready—many on this side of the aisle—to implement the advanced placement provisions in the America COMPETES Act. That will help 1.5 million children to have those opportunities.

We are ready to implement the provision that would put 10,000 more math and science teachers in our classrooms. Many of us are ready to implement the recommendation that we pin a green card to every single foreign student legally here and who graduates from an American university in science, technology, engineering, or mathematics. Some proposals ought to be bipartisan, but they are not—or at least they weren't. I made one, and we talked about this for a while on Wednesday.

In order to encourage unity in this country, we need a common language. That seems to be common sense. Therefore, we ought to pass a law making it clear that the Federal Government should not be suing the Salvation Army, telling them they cannot require employees to speak English on the job. We got it through the Senate and to the House, where the Speaker stopped it. Now Senator CONRAD has joined in support, as have Senators MCCONNELL, BYRD, LANDRIEU, and NELSON of Nebraska. So now we have a bipartisan approach on another important issue.

We talked about the idea and the problem of the number of rural women in this country who are pregnant and cannot get the proper prenatal health care. OB/GYN doctors are leaving rural areas because runaway malpractice lawsuits are running malpractice insurance over $100,000 a year. So the pregnant women are having to drive 70 miles to Memphis or other big cities to see a doctor and get the prenatal health care they need and to have the baby. We have proposals to stop it in the way Texas and Mississippi did. We invite bipartisan proposals on that.

Mr. President, the Republican agenda will emerge over time. What I would like to say to our colleagues on the other side of the aisle and to the American people is, we want to change the way Washington does business, and we believe we know how. The way is to stand up every single day and week with new specific proposals on real issues and have a debate where one is needed. Let Senator DODD and Senator KYL have a principled argument about security versus liberty. That is in the finest tradition. Let's cut out the playpen politics. Let's don't have that, and let's earn back the confidence of the American people by dealing with specific solutions. That is what you are going to hear from Republican Senators.

No sooner had I heard some encouraging remarks from the majority leader, out comes this release from the Senate leadership and majority leader HARRY REID:

For immediate release. Democratic policy experts discuss President Bush's legacy of broken promises.

That was announced. This is playpen politics. I am sure we do it here sometimes, but I will do my best as the Republican conference chairman to make the political reward for this playpen politics so low that this kind of release and activity is moved into the nursery school where it belongs, over to the national committee where it belongs, whether it is the Democratic playpen or the Republican playpen, and that we devote ourselves to the issues facing our country.

How can we help the economy? How can we help every American be insured? How can we stop the terrorists? How can we implement the America COMPETES Act? Those are the debates we ought to have. I hope that is clear to the American people and to our colleagues. We are looking forward to this year. Republicans are ready for change in the way we do business in Washington. The people of this country are ready for that, too. I look forward to it.

I yield the floor.

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

Mr. CORNYN. Mr. President, I express my gratitude to Senator ALEXANDER, my colleague from Tennessee, for his comments and for his leadership. We decided it would be helpful to come to the floor and talk a little bit about the retreat that Senator ALEXANDER laid out and our reasons for believing that it is important that we not take the year off just because it is a Presidential election. I think Senator MCCONNELL most recently pointed out that we have had elections in this country every 2 years since 1788. So if we are going to use that as an excuse for not getting things done, we will never get anything done. We have a lot of important issues we need to address, and we will.

The month or so that we were in recess, from the Wednesday before Christmas until we came back the day after Martin Luther King's national holiday, I enjoyed being at home in Texas. As always, I traveled around the State and talked to a lot of people. But I also listened. What I heard from my constituents is the same thing I bet virtually every single Senator heard, and that is that people are sick and tired of the bickering and partisanship. They are sick and tired of seeing Congress not solving problems that only Congress can solve. Frankly, they are beginning to feel more and more like Congress is irrelevant to their daily lives. I think that is what accounts for the historically low approval rating we have seen of the Congress in the last year.

The problem is—and the occupant of the chair knows as well as I do—that I don't think the public differentiates between Republicans and Democrats when they give Congress a low approval rating, by and large. I think it is up to us, working together, to try to elevate that low approval rating by doing what our constituents expect us to do, and that is to work together when we can, without sacrificing our basic principles.

Let me say a word about that. Lest anybody confuse what Senator ALEXANDER and I are saying, that we are somehow taking leave of our principles, that is absolutely not true. In Washington, I usually tell folks that we have Democrats in Texas and we have Republicans in Texas. They are all pretty much conservative by national standards, Washington standards. But the fact is, my constituents expect for me to get something done. But that is not done by sacrificing principles. I do think we have important differences, and I think those should be debated, and then we should vote. We should be held accountable in the next election for our votes and for what we have done or not done.

I think there is an important difference between standing on your principles and then looking for common ground to try to come together and solve problems. I agree with what the Senator from Tennessee said. We all know it is a fact of life in the Senate

that you cannot get anything done without bipartisan support. Our 60-vote rule for cloture to close off debate in order to have an up-or-down vote requires it. So why not recognize that, sure, we can say no, no, no, but occasionally I think we ought to look for an opportunity to say yes where it doesn't sacrifice our principles, but it does find common ground to try to get things done on behalf of the American people.

I have constituents who asked me, as recently as last night: Don't you find life in the Senate and in Washington and in the Congress frustrating? Many say I could never do what you do because I would be so frustrated by it. I think there is plenty of opportunity for frustration, if we dwell on that. But I prefer to look at the opportunities for making life better for the American people and for offering solutions on the difficult issues that confront us. To me, that is what I get up and come to work for. That is why I enjoy being in the Senate. I believe it gives me a chance, as one American, to do what I can to try to make life better and to make a difference. It is not about sacrificing principles. It is doing what we said in the preamble to the Constitution when we said:

We the People of the United States, in Order to form a more perfect Union, establish Justice, ensure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity. . . .

We said that in 1787, in a document that was ratified by all of the States by 1790. That should be our goal still today—to be true to that statement of principle about what our goals are as a nation.

The Senator from Tennessee did go through a number of concrete proposals and talked about what our alternative will be to the proposals being made on the other side of the aisle. Again, I agree with him, that the American people don't expect us to come here and split the difference on everything in order to come up with an agreement if they believe that outcome is devoid of principle or sacrifices fundamental values. There are differences between the parties. Those differences ought to be reflected in a dignified and civilized and respectful debate that highlights those differences, and then we have a vote on those different points of view. We will either pass legislation or not based on that vote. But I think it will be acting in the greatest tradition of the Senate, and in a way that our constituents back home earnestly wish we would act and, unfortunately, in a way that we have not always acted.

I have to believe all Members of this body want to see our economy as strong as it can possibly be going forward. They want to see that our Nation is secure and our defense remains the best in the world; that all Americans have access to quality health care; that taxpayers not be compelled to foot the bill for wasteful Washington spending. I have to believe that all of our constituents, and indeed all Members of the Senate, believe that we need a sustainable energy policy that allows us to turn away from our over-reliance on imported oil and gas from dangerous parts of the world.

I think, as Senator ALEXANDER pointed out, principled differences on important legislation need to be debated in the Senate and voted on and resolved rather than be left without a solution and unaddressed.

We do have an opportunity, I believe, this new year as we have come back not just to say no, no, no, to every idea that is offered on the floor but to say: Here are our alternative solutions to the problems that confront America.

Mr. President, you will be hearing us on the floor of the Senate on a weekly basis not only addressing legislation offered by the majority—and, of course, it is the majority leader's prerogative to set the agenda to call up bills; we will not be able to do that as Members of the minority—but what you will hear from us is a principled proposal to solve the problems that confront America on each of the big issues this Nation wants us to address and wants us to expend our very best efforts to try to solve.

I am delighted we have seen a sort of renewed enthusiasm for finding solutions in a principled way. I agree with the Senator from Tennessee, the retreat we had I thought was one of the most hopeful retreats I have ever participated in as a Member of the Senate because I think what we saw is a recommitment to try to solve problems, to avoid the partisan bickering and the divisiveness that has resulted in the historically lower approval rating of Congress and which turns off so many of our constituents.

Of course, as we all know, as elected officials, if we do not respond to our employer and try to address the concerns our employer has—and our employers are our constituents—then our employers may look for somebody else to do the job in the next election.

It is up to us to be responsive to those concerns, and I think without sacrificing principles, by staying true to those values we brought with us but looking for common ground. That is the art in our job, and it is more art than science. I have said it before and I will say it again, I think compromise for compromise's sake is overrated because if all compromise means is sacrificing your principles in order to get a problem behind you, I don't think you have done your job. Doing your job means standing on your principles but looking for common ground, consistent with those principles, to solve problems. There is plenty of common ground to find if we will work a little bit harder and a little bit more in earnest to try to find it.

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

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

The legislative clerk proceeded to call the roll.

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

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

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. BOND. Mr. President, I ask unanimous consent that the Senate recess subject to the call of the Chair.

There being no objection, the Senate, at 12:04 p.m., recessed subject to the call of the Chair and reassembled at 12:07 p.m., when called to order by the Presiding Officer (Ms. KLOBUCHAR).

Mr. BOND. Madam 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. WHITEHOUSE. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

FISA AMENDMENTS ACT OF 2007—Continued

Mr. WHITEHOUSE. Madam President, I ask that the pending amendment be set aside so I may call up amendment No. 3905.

The PRESIDING OFFICER. Is there objection?

Mr. BOND. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. WHITEHOUSE. Madam President, I guess I would like to start by saying I appreciate very much the sentiments that were recently expressed by the Senator from Tennessee and the Senator from Texas, who is my friend who served with me as attorney general at the same time in our respective States, Texas and Rhode Island. I ask them to let me know when that new approach will begin because I am, frankly, not seeing much of it in the Foreign Intelligence Surveillance Act procedures we are going through on the floor. I confess, I am a new Member of this body, and I do not understand why.

We heard Senator DODD, the very distinguished Senator from Connecticut, who has served in this body for 27 years, describe how important this Chamber is and that it is the right of Senators to debate matters, not for the sake of ventilating themselves but toward actually getting a vote on a real amendment on a matter of real significance.

We had one vote on a committee amendment. Not one Senator has achieved getting a vote, and we are on a very short timeframe. I may be new, but I will tell you that in the 1 year I have served, I have presided a great

deal. The Presiding Officer, the Senator from Minnesota, and I have both spent a lot of time in that chair. It is a wonderful place to sit, and you get a great view and a great education as to what goes on in the Chamber.

I can recall over and over hearing my colleagues on the Republican side of the aisle, as mad as they could be, complaining bitterly because the majority had offered them only 10 amendments on a bill or only 20 amendments on a bill. I cannot get one called up.

Let me first say, this is an important issue. On the one hand, we have to deal with perhaps the greatest danger our country faces at this moment, which is the threat that comes from international terrorism, and we have at the same time to deal with one of the basic principles of our Government—freedom, freedom from, among other things, Government surveillance, unless it is done properly and by the law.

This is not some new idea. It goes back to the Bill of Rights, where the very Founders of this country mandated that before the Government could intrude into the persons, places, houses, and effects of Americans, they had to get permission from a court.

The balance between freedom and security is an important one, a historic one. So this is no minor issue on which to avoid real debate, and the amendments are important ones. The amendments involve the immunity issue about which Senator DODD spoke so passionately. This is a very important issue.

As I see it, we have some cleaning up to do in this body as a result of a real mess the Bush administration left us. They could have gotten a court order, and we know perfectly well that if a court order had been obtained, there would be no issue of immunity for us to address. A company following a court order is protected. End of story. They couldn't be troubled to get a court order to protect these companies they are so concerned about now. But you do not necessarily need a court order. You can actually get a certification from the appropriate Government official using language this Congress has provided, and it will also provide protection to companies that cooperate in Government surveillance, as long as they have been notified properly through the certification process.

One would think the litigation would be over, if that certification process had been complied with. It would be a slam dunk. Which raises the logical conclusion that for some reason, the Government did not comply with the certification process. I don't know why they did that. I don't know if anybody else knows why they did that. It could be being obtuse and stubborn and insisting it had to be done under the President's unitary article II authority that they purposefully, deliberately failed to follow the certification process to prove that point they wanted to prove.

If that is the case, they have walked these phone companies into all this concern we now have to address for no purpose whatsoever. But now we do have to address the problem. No matter how they got into it, we have this problem to address, and it is not an easy problem.

One side says: Well, blanket immunity. Well, that is fine, but you are taking away rights and due process of people who are in court right now. A judge has looked at this case and he didn't throw it out. There is nothing to suggest that the litigation going on right now is not entirely legitimate. So if we do that, we are taking away real rights of real Americans that are currently in play right now before a court.

I don't know of a time the Congress has ever done that. As a former prosecutor, like the Presiding Officer, the very notion that it is the legislature's job to go into ongoing legitimate litigation and make decisions about who should win and who should lose seems to me a spectacular trespass over the doctrine of separation of powers. I hope my colleagues in this body who are in the Federalist Society would be concerned about this separation of powers.

On the other hand, we could strip the legislation of its immunity entirely and leave the companies in the litigation. That is not a great solution either. There is a problem with that solution. The problem with that solution is that the Bush administration has bound and gagged the company defendants—instructed them they may not defend themselves. So here you have legitimate American corporations in legitimate litigation being told by the Government that they may not speak, they may not answer, they may not defend themselves. That doesn't seem like a great outcome either.

Well, an amendment I wish to offer, the one I just tried to call up, proposes a potential solution. If the Government is going to tell them they can't defend themselves, then in all decency shouldn't the Government step in for them and say: OK, we are going to bind you and we are going to gag you in this ring of litigation combat, but we are going to step in for you and not leave you unable to defend yourself? Isn't that the most decent, basic thing you could expect the Government to do? That is what this amendment would do. It would substitute the Government for the defendant corporations that the Government has bound and gagged in this litigation—muzzled.

It would do another thing: It would make sure that a court decided that these companies had in fact acted in good faith before they were given that relief. They have told us they have acted in good faith, but we are a legislature. Good faith is a finding the courts make. We are not judges. We haven't heard from all sides. We haven't had hearings, such as a court would have to get to the bottom of this.

There is an easy way to do it. You let the FISA Court, which has the secrecy necessary to get to the bottom of this, make the determination, the fundamental determination: Did these companies, in fact, act in good faith? That is a basic point of entry. We have all assumed it to be true, but it is not our job as Members of Congress to decide on the good faith of an individual litigant in a matter that is before a court.

I think this is a very legitimate amendment. It may not be germane postcloture. It may never come up as a result of this. Maybe it is just the new Senator. Poor kid, all this work on these bills. Doesn't he know the merits don't matter around here? Maybe it is a situation related to me not knowing my way around here yet. But I don't think so. Because Senator FEINSTEIN, who has been here for a very long time, who is very distinguished, who is one of the most bipartisan Senators in this Chamber, if not the most bipartisan Senator in this Chamber, has a very similar piece of legislation. She has taken the good faith test in the Foreign Intelligence Surveillance Court and picked it out as a separate, solitary piece of legislation, and she is pursuing that. That amendment can't be called up either.

You could say: Well, maybe it is because I am a Democrat; they are shutting down all the Democrats. But my amendment is cosponsored by ARLEN SPECTER, the very distinguished Senator from Pennsylvania, who has been the chairman of the Judiciary Committee. It is the Specter-Whitehouse amendment. I don't see how you could have a better credential, a better bipartisan credential than to have the Republican chairman of the Judiciary Committee as the cosponsor of the amendment. And yet we can't call it up, and because of the cloture motion that has been filed, it may never be called up.

I think we are doing serious work, and I think we should get votes on these amendments. I know some of my colleagues have said: Well, you should defer to the committee bill. The committee bill was so good, it was bipartisan, it passed 13 to 2. Well, I was in that committee. Yes, it passed 13 to 2, but an awful lot of us said in our remarks on that bill that we passed it out of that committee in order to work on it further in the Judiciary Committee and in order to move amendments on the floor. It did not pass with a 13-to-2 vote of Senators saying this is ready to go to the President; this is ready to clear the Senate. It passed on a 13-to-2 vote of Senators who knew that the bill was going to the Judiciary Committee and who knew that the bill was going to the floor and had reason to expect the ordinary courtesies of this body to be able to offer amendments would be honored.

In fact, the amendment I tried to offer yesterday that was objected to, that I can't call up, I raised in the Intelligence Committee. I was told by the executive branch officials there—and I should say that throughout this process I hope nobody would challenge how

carefully my office has worked with the administration to get these things right, to get technical language worked through properly—I was told by the executive branch officials that the way I had written the amendment caused technical difficulties. So I didn't pursue it in the Intelligence Committee. I withdrew it, noting that we would work through the technical difficulties and then bring it up again later on.

Nobody said then, oh, Senator WHITEHOUSE, there is going to be no later on; the committee vote is all you will get. Nobody said that. Because that would violate the history and traditions of the Senate, because it would be wrong, and because it wasn't the program. It wasn't the plan at the time. I feel it has been represented to me that these amendments would be voted on, and I feel that representation has been dishonored by the procedure we are in right now.

I want to read something. I prepared remarks in the event that this amendment was going to go in. Of course, I thought it was going to go in. I had the Republican former chairman of the Judiciary Committee as a cosponsor and it addresses the biggest question in this legislation. It provides a potential resolution of the conflict between the two arguments. Why on Earth would it not be something that I would be able to exercise my traditional right to raise on the floor? So I planned ahead and I wrote remarks for that occasion. Here is what I wrote at the very end of the remarks.

Madam President, whether this amendment passes or fails, I would like to say that it is the product of a truly commendable process. Everybody here knows the old saw that the making of law is like the making of sausage. You might like the results, but you don't want to see what goes into making it. Not so here. This amendment and Senator Feinstein's are the results of many hours of thoughtful, bipartisan consideration, hard work by Senators and their staffs, reasoned and respectful committee debate, and what I am sure will be thorough debate on the floor.

Those are the remarks I wrote. And I have to say right now, those words taste like ashes in my mouth. I hope the spirit that Senator ALEXANDER and Senator CORNYN brought to the floor a moment ago will begin to animate the FISA debate, and that legitimate—and I believe my Republican colleagues will concede these are legitimate—and sincere—and I believe my Republican colleagues will concede these are sincere—and important amendments have a chance to be raised and debated and voted on here on the floor of the Senate.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. BOND. Madam President, first, I express my admiration for the Senator from Rhode Island. The hard work he has put in on the Senate Intelligence Committee and the experience he brings to that committee is very important. We have worked with him on many issues that we were able to accomplish in the committee. I agree with his assertion that we need to balance freedom and security. That is one of the heavy responsibilities we have in the Senate Intelligence Committee.

He talks about an amendment he has presented on a bipartisan basis, and he and his Republican cosponsor feel very strongly about it. I would be happy at the appropriate time to have debate and a vote on this very important measure. But I also happen to agree with the Senate majority leader, who said back in December that the issues before us on this FISA bill are so important that we must ensure they have a 60-vote margin for passage, the same vote that would have to occur if we were to overcome a filibuster. That will ensure that there will be no filibuster of the bill.

We filed cloture to make sure we could go forward with the bill. We are waiting to see how that works out. But the measures, as I have stated earlier—and the proponent of this amendment had the distinct misfortune to be in the chair when I addressed this earlier today—but for my colleagues, I would say that we have before us a very carefully crafted bipartisan compromise to improve the FISA, Foreign Intelligence Surveillance Act, significantly and to ensure that it can work to keep our country safe.

Passing these measures on a 60-vote margin is nothing new. When I brought the Protect America Act to the floor on August 3, I brought it on an agreement that we had to have 60 votes to pass it, because it is a very important bill. And I assume that this bill, which I hope will pass, will have to pass with 60 votes.

I think it is a reasonable proposition to say that a 60-vote threshold must be achieved to ensure there is bipartisan agreement on something that is this important to our security and our freedom.

Now, my colleague raised the question about why the immediate interception of foreign intelligence did not go forward right after 9/11, when the President determined there must be interception of telephone and other electronic transmissions coming from foreign terrorists abroad into the United States.

I am told the administration met with the Gang of 8, leaders of the House and Senate and the House and Senate Intelligence Committees. They were faced with the problems that arose when the court order occurred in the spring of last year, saying the existing FISA law did not permit interception of communications coming through the way—coming the way by which they now come, through cable and wire.

Previously, collections occurred routinely against foreign sources by radio wave. And there were minimization procedures. But the FISA Court was not involved. Because of the change in technology, as the order of the court indicated last spring, FISA applied to collection of most of the foreign terrorist communications, whether they were coming into the United States or into other areas.

We were advised by the commanding general, Special Operations Command General McCrystal, that the limitations of FISA in April and May and June and July prevented our intelligence authorities from collecting vital signals information on communications among terrorists in the battlefield, putting our troops at risk.

He begged and pleaded to get it done. Well, despite the begging and pleading to get it done, you have seen how long it takes us to get FISA changed. As I understand the conversations held in the aftermath of 9/11, when we knew there were other attacks being planned and we needed to get control of them, there was general agreement among the parties, legislative and executive, that we could not afford to try to take the time to try to change FISA, to make it work with the new electronic signals means of communication in time to stop further terrorist attacks.

How long has it taken to get FISA passed? Well, the Director of National Intelligence sent up a bill in April pointing out that the old FISA law did not permit collection of foreign signals intelligence from known terrorist targets abroad. He sent it up in April. He testified before our committee in May. He came to the Senate and had a hearing in our classified room telling leaders of both parties how important and how sensitive it was.

Another month passed. Nothing happened. He came back with a short-term extension that had to have a 6-month sunset on it. We passed that. We passed that with a 60-vote margin. That has become standard for any controversial and important legislation coming before this body, which is applied not only in FISA but many other circumstances.

So we got a 6-month extension. Now, we are still debating whether to have a slightly longer extension of the FISA bill. We reported the bill on a bipartisan 13-to-2 majority in October. It sat for 2 months. The majority leader tried to bring it up, but he was filibustered from bringing it up.

We are now at the end of January, when the Protect America Act expires on February 1. We need to move forward to get this bill passed. We need to move forward as promptly as we can. But we need to move forward on the same ground rules by which other major legislation and which the Protect America Act came to the floor; that is, a 60-vote margin to ensure there is bipartisan agreement on something as important as the freedom and security framed by the FISA debate.

Let me add a word or two about the FISA Court. I had thought the distinguished Senator from Rhode Island was going to offer an amendment on assessing compliance and toss that to the FISA Court. Well, the FISA Court, or FISC as we call it, was created in 1978

to issue orders for domestic surveillance on particular targets.

Congress specifically left foreign surveillance activities to the executive branch and to the intelligence community. The FISA Court, they are article III judges who are called in from time to time to make the judgments of probable cause for issuing warrants. They have expertise in issuing warrants for surveillance on a domestic basis.

The bill before us gives them that responsibility, as did the other FISA, the old FISA, for issuing those orders for people or facilities in the United States. The old one said ''facilities in the United States.''

Well, that court is not set up to deal with foreign intelligence surveillance. As I quoted yesterday, the court's own words said—and this is the December 11, In re: Motion for Court Records. The court stated that: The FISA Court judges are not expected to or desire to become experts in foreign intelligence activities and do not make substantive judgments on the propriety or need for a particular surveillance. Even if a typical FISA judge has more expertise in national security matters than a typical district court judge, that expertise would still not equal that of the executive branch which is constitutionally entrusted with protecting national security.

So I expect we will get to the point where we will be debating the distinguished Senator's assessing compliance amendment. But he has brought today the substitution amendment.

I have already explained why we could not get through signals collection immediately after 9/11 if we had gone to the old FISA. How many months would it have taken? Well, the leaders who apparently spoke with the intelligence community and the White House said they did not want to highlight the fact that we were going to be listening in and they did not think it would work quickly.

The intelligence committee has carefully assessed the orders which were given to the telecommunications carriers which may or may not have participated in the Terrorist Surveillance Program. And they were based, yes, they were based largely on article II.

The FISC has already indicated nothing Congress can do can extinguish the President's authority under article II, but Congress also passed the authorization for use of military force, which was a counterbalance in the weighing of the constitutional arguments of article II with the provisions of the FISA law.

I have reviewed the Attorney General's findings, the Department of Justice findings. I have read the authorizations and the directives. It is clear to me, and clear to others, most of the others who have reviewed it, they were clearly acting under the color of law.

I happen to think they were right. You can make an argument that maybe they were not right. But the carriers that may have participated were not in a position to challenge those. They got a lawful order from the head of the intelligence community, based on authorization from the President, in a manner cleared by the Department of Justice. Under those circumstances, I believe it would not only have been unpatriotic, but it would have been willful for the carriers to refuse to participate. Yet they are being sued.

I think the suits are designed to cripple our intelligence community. There are not going to be significant judgments awarded no matter what they say because anybody who was intercepted would have to come in to court and say they were intercepted and prove harm. I really question whether they can do that. But under the substitution argument, the disaster to our intelligence operations is clear, as is the damage to the reputation and the business of any carriers which may have participated.

Back in 2006, right after the disclosure of this and the terrorist finance tracking measure, when the newspapers carried it, television carried it, terrorist leaders—very bright people—abroad learned of it, communicated about it on their own communications, and those communications, I was told in the field, went down significantly.

So I asked General Hayden, at his confirmation hearing to be head of CIA, how badly these disclosures hurt us. And he said at the time that we are applying the Darwinian theory to terrorists; we are only capturing dummies. The more we disclose about the workings of our intelligence intercept capabilities, the more those whom we would target know how to avoid them. And they are taking steps; they know too much about it. Any further disclosures would further complicate and damage the collection capabilities of our intelligence community.

Moreover, the damage to the reputation of the carriers would be significant. The damage would occur likely in exposing the carriers—their employees and their facilities—to terrorist activities or vigilante activities. It would destroy their business reputation, cause untold harm in the United States, and probably effectively curtail their ability to operate overseas. If they are put out of operation or if they are limited in their operations, then the intelligence community loses a substantial means of acquiring the intelligence we need.

So when this bill comes up—I expect it will come up, but I believe it must come up under a 60-vote rule or we are going to go through the normal process of getting to 60 votes, and we will never get anywhere. I think both sides of the aisle should recognize that. I will be happy to make these arguments.

I know my colleague from Rhode Island is a very skilled lawyer, a very effective debater. He will present his arguments, I will present my arguments, and there will be others who will join with us. So while I would love to get on with the debate and votes, we are not going to go there until we resolve the question of whether there is a 60-vote margin.

So I thank the Chair, and I thank my colleague from Rhode Island.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. WHITEHOUSE. Madam President, I appreciate very much the arguments made by the very distinguished Senator from Missouri, who is also the vice chairman of the Intelligence Committee and possesses great experience in this area. My point, though, is that all these arguments are for naught if the simple courtesy of a Senator being allowed to vote on his amendment is not honored.

This particular amendment being nongermane postcloture means it may very well be squeezed out by the procedural devices the Republican leader has applied. So my simple question is, if I may ask it through the Chair to the distinguished Senator from Missouri, the Republican manager of this bill, can we assure Senator SPECTER and myself that this amendment will, at the appropriate time in this legislation, receive a vote?

Mr. BOND. Madam President, I am happy to respond as soon as we go back to the normal means of proceeding on FISA matters, establishing a 60-vote threshold, which is the standard I had to meet to bring the Protect America Act to the floor. I would certainly expect that his amendment would be brought up, fully discussed, and debated. This is one of the major issues we have to decide. But we have to decide it on a 60-vote point of order.

MORNING BUSINESS

Mr. BOND. Madam President, I ask unanimous consent that the Senate proceed to a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

The Senator from North Dakota.

FISA

Mr. DORGAN. Madam President, we are talking about FISA we use a lot of acronyms in Washington, DC, unfortunately—the Foreign Intelligence Surveillance Act. It is a complicated subject, and one, if people have been watching the debate, that is also controversial. There is a lot of passion about this subject. We have people standing up and saying: None of this should be disclosed. We should not be talking about this. This is about the ability to protect our country against terrorists. Of course, we have to listen into communications and intercept communications. It is the only way to find out if there are terrorist acts being plotted by terrorist groups, and so on. There is that kind of thing.

There are concerns on the other side by people who say: Wait a second.

There is something called a Constitution in this country. There is a right to privacy, a right to expect that the Government will not be spying on American citizens without cause.

This is a very controversial and difficult subject. Frankly, nearly everyone, with the possible exception of the chairman and ranking member or maybe one or two others on the Intelligence Committee, knows very little about that which we are discussing.

Let me put up a photograph of a door. This is a door in San Francisco, CA, a rather unremarkable photograph of a door. This is a door that is in AT&T's central offices in San Francisco. A courageous employee of AT&T named Mark Klein, who had been with the company for 22 years, blew the whistle on what was happening behind this door. According to Mark Klein, the National Security Agency had connected fiber optic cables to AT&T's circuits through which the National Security Agency could essentially monitor all of the data crossing the Internet. Here is what Mr. KLEIN had to say went on behind this door:

> It appears the [National Security Agency] is capable of conducting what amounts to vacuum-cleaner surveillance of all the data crossing the Internet—whether that be people's e-mail, web surfing, or any other data.

The description of what was happening at this one telephone company in this one location in San Francisco was this: the intercepting of communications at the AT&T Folsom Street facility, millions, perhaps billions of communications from ordinary Americans coming into and through the facility, which would normally have been the case for a telephone company, and a splitter being used, according to the discussion by Mark Klein, splitting off all of this conversation into an NSA-controlled room, to be eventually evaluated with sophisticated programming, and then going back out in order to complete the communication. So you have effectively a copy of everything that is happening going through with a splitter to a secret room.

When this became public, when a whistleblower working for the company said, here is what is happening, there was an unbelievable outcry on both sides. Some people said: What on Earth is happening? We have secret rooms in which the National Security Agency is running all this data and all this information through and spying on American citizens? Others said: What is going on? Who on Earth would have decided they should disclose this publicly? They are going to alert the terrorists to what we are doing. We had both sides aghast that this was disclosed. It is important to say that, initially, almost no one in an official capacity was willing to admit to this. Finally, it was admitted, yes, there was a program. The President said: Yes, there is a program—speaking, apparently, of just this program; we don't know of other programs that exist or may exist, but this program existed without our knowledge. The President indicated this program existed because we are going after the bad guys, and we have a right to do that. And we did this program because the process that had been set up because of abuses with respect to eavesdropping and spying on American citizens decades ago, that process was way too cumbersome, took far too much time, and we needed to streamline that. That is a paraphrase. But there was an admission that this program existed and no additional legal authority needed to empower the President to do it.

So that is where we are. Most of us don't know the full extent of this program at all. In fact, my understanding is that rooms like this exist in other parts of the country with other telephone companies where splitters are used to move data to separate rooms and data is evaluated.

This whole process comes from several decades ago when something called the FISA Court was set up, a court to evaluate the questions about when it is legal and appropriate and when the Government is able to intercept communications. The FISA Court was established for the very purpose of trying to make the judgment about when it is appropriate to go after the bad guys and how to protect our civil liberties at the same time.

The FISA Court was an outgrowth of concern by the Congress when we discovered that there was a time in this country when we had the National Security Agency running secret projects called Shamrock and Minaret to gather both international communications and also domestic communications. Project Shamrock actually started during the Second World War when major communications companies of the day gave the Federal Government access to all of their international traffic. One can imagine, in the fight against the Nazis and the Japanese Imperial Army, the desire for international communications to evaluate things that might threaten this country's security. But the Shamrock program then, as we know, changed over time.

At first the goal was to intercept international telegrams relating to foreign targets. Then, soon the Government began to intercept telegrams of U.S. citizens. By the time there were hearings held in the Congress, the National Security Agency was intercepting and analyzing about 150,000 messages per month.

Data from Project Shamrock was then used for another project code named Project Minaret, which we now know spied on perceived political opponents of the then-administration of Richard Nixon. Under this program the NSA added Vietnam war protesters to its watch list. After there was a march on the Pentagon, the Army requested that they add antiwar protesters. The list included people such as folk singer Joan Baez and civil rights leader Dr. Martin Luther King, Jr. We just celebrated within the week the Federal holiday celebrating the birthday of Martin Luther King, Jr. Yet it was not too many decades ago that Dr. Martin Luther King, Jr., was under surveillance by his own Government.

The Congress passed its findings, when it did investigative hearings, and the Foreign Intelligence Surveillance Act created the FISA Court.

Here is the experience with the FISA Courts. Between 1975 and 2006, there were 2,990 warrants issued by the FISA Court. Only five were denied. What that suggests is that it is not too difficult to get approval by the FISA Court for surveillance. But the President and Mr. MCCONNELL, the head of our intelligence agency, have indicated that there has been a problem.

For example, Mr. MCCONNELL cited the capture of three American soldiers who were later killed in Iraq. Right after they were captured there was a period of time when it was critically important to be able to intercept communications in Iraq, and they were encumbered at a time when it was critical to find out who held these soldiers.

That is not accurate, and the head of intelligence would have known that. I don't know why he represented that. There is a period of time when in an emergency situation, you can begin surveillance without having to go to FISA. You have to go FISA after that period of time, but you are given an opportunity for emergency surveillance even before you get the approval or even before you go to the FISA Court.

What we have learned, however, through all of this process is from a December 2005 report in the newspapers. President Bush had authorized the National Security Agency to eavesdrop without warrants inside the United States which bypassed the entire FISA Court system. It turns out that most of the large telephone companies in this country had gone along with the administration's request for that activity.

We are told that the administration, Attorney General Gonzales, and others furnished the telephone companies with some sort of letter, a certification of sorts. We don't know what that letter was, however, because the administration, citing the State Secrets Act, refuses to allow that to be disclosed.

I think if they provide certification to a telephone company—and the telephone company relies on that—by officers of the Federal Government, in good faith, let's have that disclosed. Why should we wonder about the actions of a telephone company? If, in fact, you have an Attorney General of the United States who is certifying, let's find out what this administration did. Let's find out how they did it. Let's not have them tell us you cannot even see what was provided to a telephone company in terms of certification. That, in my judgment, does not pass the red face test.

I hope very much we will begin to learn at some point what this administration has done, when they did it, and

what the consequences of it are. This issue of the Foreign Intelligence Surveillance Act has become a political football by this administration. The last time we debated this, some while ago, it was quite clear that the politics of it were viewed as wonderful politics by the other side and by the White House. But this ought not be about politics at all. This ought to be about two issues, both of which are critically important: One is protecting this country's interests, yes, giving us a chance to make sure we understand what the terrorists are doing, how to foil terrorist attempts to injure this country—it is about that; and that is very important—but it is also about civil liberties and protecting the rights of the American people at the same time.

We thought we had done that by putting together the FISA Court. We thought we had done that by establishing a procedure that needed to be followed. We now understand the President, with his lawyers, says those laws do not matter. There is in the Constitution, they say, something about the powers of the Commander in Chief, and he can do whatever he wants. That is a pretty dangerous interpretation of the U.S. Constitution.

We debate this in so much ignorance because almost no one knows what this administration has done, and they are preventing us from knowing as much as we should know, in most cases, by claiming protection under the State Secrets Act, and not even allowing the release of the letter that was provided to the telephone companies that cooperated that describes to them the legal authority for doing so.

I think there is much to be learned here, much we need to know. I think it is very important, as we reach an agreement on the Foreign Intelligence Surveillance Act—and we should because it is an important circumstance by which we need, in certain cases, when we believe there is information being passed from terrorist to terrorist, and so on—if those communications are being run through this country, we need to be able to intercept and interpret what is happening—but it is critically important we not allow a kind of an approach to this where there is no oversight, there is no check.

We have a government of checks and balances. What the President and his people seem to be saying to us is: We are not interested in checks and balances. We have the authority in the Constitution, as we interpret it, and that means it exceeds every law you can pass. We are going to do what we want to do. And if you don't like it, tough luck. And if you don't like it, by the way, what we will say to the American people is you are not willing to stand up for the security of this country.

It is outrageous. It is dragging this issue smack-dab in the middle of their little political balloon. But this is a much more important process than that. We need to do this, and we need to get it right in order to protect America. We need to do this, and we need to get it right in order to protect the interests of the American people as well—and that interest of privacy and that interest of making sure that ''big brother government'' is not running all of your telephone calls and all of your e-mails and all of your information through its drift net to find out what you are saying and what you are doing and who you are talking to.

That is not what I understand to be the best interests of this country or the guarantees that exist in the Constitution for the American people. That is why this is worth an important controversy and an important fight. It is why it is for us to take enough time to get it right. This is a big issue. We do a lot of things on the floor of the Senate that are not so big—not big issues. They are smaller issues in consequence. This issue is about freedom and liberty and the guarantees given the American people in the Constitution. It is about whether there is a check on Presidential power that assumes they have the power that exceeds all other laws. If we do not have that kind of check and balance in this Government, then we have bigger problems than I thought.

So I only wanted to say, with respect to this issue, we do not know much about it. We know at this point that behind this door, as shown on this chart—behind this door—exists information split off what is called a splitter from the main line. Massive amounts of information come into it—in this case, it was AT&T; it could have been other telephone companies—it is split off, and then all of it is evaluated to find out: Is there something there that is suspicious? It is not the way America has ever worked, and not the way it should work.

So the more we know, I think the more we will be able to better understand how to do two things at once: protect our country against terrorists, and protect the civil liberties of the American people. Both are important. At least there is one group of people in this political system of ours that believes the first is far more important than the second. They are wrong. They are both important, and both worth standing up for.

STIMULUS PACKAGE

Mr. DORGAN. Madam President, I want to talk for a few moments about the so-called stimulus package we are assembling to help our economy. What I want to say, first of all, is we have an economy that is a remarkable engine. This little spot on the planet—the United States of America—is quite an unbelievable economic engine. It has provided bounties and benefits to a group of people that exceed that provided to almost anybody else on this planet.

But we have run into some real problems. We now find ourselves in the year 2008 where we have a stock market that is wildly gyrating up and down. We see these dramatic swings in the stock market. That is a reflection of a substantial amount of concern and nervousness about what is happening in the economy and where we are heading.

In the last several decades we have morphed into a global economy. I have never questioned that. I have always questioned why the rules have not kept up. But the global economy is a different kind of economy for us. We are now told by those who wanted to create their own set of rules that the American people should compete with folks who work in Shenzhen, China, for 20 and 30 cents an hour making bicycles and little red wagons. There is downward pressure on income in this country. There is great concern by the American people about the loss of jobs and the loss of benefits. So there is a lot happening that is of great concern.

In addition to these dramatic yo-yo swings in the stock market that reflect widespread concern about the economy—we have at the same time some real fundamental structural problems in the economy. Because it appears the economy is now weak, we have more people unemployed. We have fewer housing starts. We have a whole range of issues that demonstrate a serious economic problem: a slowdown certainly, a recession very likely. Because of that, we are told there needs to be some short-term stimulus to provide a spark to help crank up this economy again.

Well, we always talk about that in an economic slowdown. We have put economic stabilizers in place over a long period of time—two to three to four decades—that have been very helpful in moderating the recessions we have had. Normally speaking, the recessions we have had have been shallower recessions because of economic stabilizers that have been put in place. But that does not mean you will not ever have recessions.

We might be in a recession now. So the Federal Reserve Board decided, earlier this week, cuts interest rates by 75 basis points. That was a big, bold, dramatic move by the Fed. These people wear gray suits and do not do anything very boldly, but this week they decided: Man, we are going to do something bold—so three-quarters of a percent interest rate cut.

It is expected, then, in monetary policy—having been moved by the Fed earlier this week—in fiscal policy our responsibility in Congress is to do something as well. So we in the Congress are putting together a fiscal policy approach. That approach is a stimulus package.

Well, the stimulus package would typically be some sort of tax rebate to people, perhaps some investment tax incentives to stimulate capital acquisition by businesses.

The House and the White House have moved now to agree on something that

is going to come to us from the House of Representatives. I think that is good news. It has been a long time since we have seen much cooperation from the White House. I think it is good news this week. The Fed moved. The White House is interested in an agreement. So we are going to have a stimulus package. I think the sooner the better. We need to tell the American people we are moving. I also want to say this about a stimulus package. I think there are two steps to it. One is shorter term—rebates for individuals, incentives for business investments, and so on—but, second, and I think very important, is to understand one of the quick ways to put people back to work and also to invest in America's future, to help build America, is in infrastructure: roads and bridges and dams and all the things that have been deteriorating.

We are so far behind in infrastructure. If we are going to be a world class economic power, we need to invest in infrastructure. We can do that and should do that as also part of a second step in a package to stimulate this economy.

Having said that, let me make a couple other points. If all we do is genuflect about a stimulus package, and then we step back and say, ''Well, we are out of breath now. We have done that''—if that is all we do, this country is in deep trouble.

Let me describe what I think the significant causes of our trouble are. No. 1, we have a President who says, through his Vice President: Deficits don't matter. Well, of course he is wrong.

Paul O'Neill, the first Secretary of the Treasury under the Bush administration, and one of the real straight shooters in this town—he's a guy I liked; he said it the way he felt it and thought it, and you could believe him—Paul O'Neill, conservative Republican Secretary of the Treasury—well, he got fired. Do you know why he got fired? Because DICK CHENEY came into his office and, according to the things I have read, said: Deficits don't matter. Don't you understand? Deficits don't matter.

Well, Paul O'Neill did not believe that for a minute. Because he did not believe that, he was not part of the team, and he got fired.

Deficits do matter. This administration inherited a budget surplus of well over $200 billion a year and has turned it around into a huge budget deficit. This administration has added over $3 trillion to the debt. It ran into a recession, a terrorist attack, a war in Afghanistan, a war in Iraq, and now a subprime loan scandal.

Some of us stood on the floor of the Senate and said: Mr. President, don't push this issue of giving huge tax cuts on expected surpluses that are going to occur but have not yet occurred. What if something happens? The President said: Not on your life. We are going forward with my plan.

He pushed it through this Congress. I did not support it. But the result was big budget surpluses were turned into record budget deficits, because now we had all these unexpected circumstances happen.

Well, the President said: We are going to fight a war, but we are going to send soldiers to Iraq and Afghanistan and we are not going to pay for it. We are going to send soldiers abroad to fight, but we are not going to ask anybody to pay for it. We will add it to the debt. So a little over two-thirds of a trillion dollars has been added to the Federal debt.

Last year, the President sent us a request saying: I want $196 billion over and above that which I have asked for the Defense Department as an emergency. I want none of it paid for, and I want it now: $196 billion. That is $16 billion a month, $4 billion a week, and I don't want to pay for any of it, he said.

This is a reckless fiscal policy that has been running this country into a ditch. Now you add to that fiscal policy from this administration—which is supposed to be a conservative administration—you add to that the trade deficit. The trade deficit is $2 billion a day, every single day, 7 days a week. Every single day, we import $2 billion more than we export—over $700 billion a year in trade deficit.

We are not only shipping our money overseas, which then gives the Chinese and the Japanese the opportunity and responsibility to finance our debt, but they then begin to buy a fair amount of our country. We have just seen it in recent weeks. Citigroup went to Singapore for $12.5 billion. GE Plastics got $11.6 billion from the Saudis. Dow Chemical got $9.5 billion from Kuwait. Citigroup needed more money; they got $7.5 billion from United Arab Emirates. Where do you think they got this money? They got it from us, with these huge trade deficits. So we have a trade deficit that is well above $700 billion a year.

I know the administration says: Well, the budget deficit is $200 billion, $300 billion. That is not true at all. It is if you take away the Social Security surplus and misuse it, and continue with fiscal policies that are not paid for. We are going to add roughly $600 billion to the federal debt in this fiscal year. So $600 billion in budget deficit, $700 billion in trade deficit, and you are talking $1.3 trillion or roughly 10 percent of the economy this country will borrower in 1 year. That is unbelievable. There are people who are drunk who think they are invisible. Well, I am not suggesting we are drunk here in the Congress. However, I am saying that both the President and the Congress seem to think we are invisible in terms of our public policies. The rest of the world sees what is happening—that our trade deficit and budget policies are way out of control.

Now add to those two things one other element: the subprime housing loan scandal that comes because federal regulators were asleep and too cozy because they didn't want to regulate those they were supposed to regulate. So we had a bunch of high flyers and hot shots who took off—many of them have now been fired but went out the door with $100 million or $200 million, and what they were doing was providing and selling, through high pressure sales techniques, mortgage loans to people who could never possibly repay them. The refrain—if you saw it on your television set or heard it on your car radio, as many people did—you wondered: How could this be? The refrain on the television advertising was hey, you know something? If you have bad credit, come to us. If you have filed bankruptcy, come to us. If you can't make your house payments, come to us. We have a loan for you. Do you want to cut your loan payment every month? Do you have bad credit? Come to us. We want to give you a loan. All over this country you heard that sort of refrain. Well, guess what: This was mortgage brokers. It was mortgage banks. It was a bunch of high-flying folks who not only were putting out bad mortgages, but then they were doing as they did in the old meat-packing plants when they put sawdust in sausage. You took bad mortgages and good ones, mixed them up, put them in a case and sliced them and securitized it all and put them all in hedge funds. Soon nobody knew what they had, but they were grinning from ear to ear because they had high returns, high yields, and high fees on the origination of these securities. It turns out a lot of them were bad securities and nobody even knows who has them. Nobody knows which ones are bad. But 3 years after the loan is put out and the interest rate is reset, we discover that loans were given to people who couldn't possibly pay them. Then we discover that those who purchased them and those who sold them can no longer claim they are good assets. They file for bankruptcy. So we have all of this going on.

Now, there is another thing that is happening at exactly the same time and is also causing great danger to our economy. Even as this subprime loan mortgage scandal is happening, we have the growth of hedge funds and derivatives, and they too are outside of the purview of regulators. With respect to the subprime mortgage loans, we had regulators who were asleep or dead from the neck up. They wanted to serve here, but didn't like Government, and didn't want to do anything. That is what happened there. On hedge funds, Senator FEINSTEIN and I and others have been on the floor for years saying: We have to regulate hedge funds. We have to understand what is happening with derivatives.

Well, guess what. If you go into a casino in Las Vegas, you are going to lose what is in your back pocket in most cases. Well, sometimes you might be able to sign for a loan, but in most cases you only lose that which you have. Hedge funds are unregulated, No.

1, and, No. 2, have unbelievable amounts of leverage, unbelievable borrowing.

A reasonably new derivative called credit default swaps have a notional amount of $43 trillion. I said $26 trillion earlier this week. That was the end of 2006. In 2007, the notional amount of credit default swaps, which most people would believe to be a foreign language, was $43 trillion. It is not a foreign language at all. These are sophisticated financial instruments that represent an unbelievable amount of speculation that in my judgment put this country's economy at great risk.

So we have budget deficits that are way out of control, and a trade deficit that is an outrage. We also have regulators who have no interest in regulating, allowing the subprime mortgage loan scandal, and hedge funds that we have had an aggressive fight on the floor about. We have the administration and others who are not interested in having any regulation of hedge funds, are unconcerned about what kind of liability exists with derivatives, and ignore the problem of this unbelievable leverage. If we don't deal with those four areas, we can stimulate forever. We can come here in the morning and stimulate every day on the floor of the Senate, if you like. It is not going to solve what is wrong with this country. If you don't put the foundation in order, if you don't lay the bricks right in the foundation, there is no structure you can build above it that is going to withstand the kind of problems that exist internally in this economy.

This country is too good a country for us to decide not to care about fixing these problems. President Bush came to the Congress and said: I am a conservative. Well, there is nothing conservative about an administration that runs up this sort of red ink. We are drowning in red ink. There is nothing conservative about an administration that has regulators who have decided they don't have any interest in regulating. It doesn't matter what the subject is: unsafe toys from China, you name it. We have regulators who are apparently collecting a Government paycheck and don't have the foggiest interest in regulating. That is how the scandal of subprime mortgage loans has happened and that has caused great injury to our country. It is also what is happening as a result of those who are preventing us from knowing what is going on with hedge funds and derivatives, which can cause a much greater level of damage than even the subprime mortgage loan scandal.

As I said, most Americans wouldn't have heard or know very little about credit default swaps and would hardly know what it means. These numbers are in the trillions. Hedge funds are about $1.2 trillion of our economy. People say: Well, that is not so much. Gosh, there is $9 trillion in mutual funds, there is roughly $40 trillion of stocks and bonds out there. Mr. President, $1.2 trillion in hedge funds. Hedge funds conduct one-half of the daily trades on the New York Stock Exchange. Think of that. One-half of the trades by hedge funds. In addition to the $1.2 trillion, you have unbelievable amounts of leverage.

So I think we face a lot of big challenges. If I didn't have great hope for the future, I wouldn't want to get up and come to work in the morning. But I have a great reservoir of hope. I believe we can fix these things. But we need leadership from the White House. We need to work together here. We need to understand that it is not just about stimulating a short-term response; this is about fixing the foundation and setting things right. I think it was Thomas Wolf who talked about an indestructible belief, a quenchless hope, a boundless optimism. I have all of that. But we have to start now and understand what we need to do to put this country back on track toward a better and brighter future, one that grows and provides opportunities for all Americans.

Madam President, I yield the floor, and I make a point of order that a quorum is not present.

The PRESIDING OFFICER. Could the Senator withhold the quorum call?

Mr. DORGAN. I will be glad to withhold the quorum call.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

RECESSION

Mr. CASEY. Madam President, I commend our colleague from North Dakota for highlighting some of the challenges we face economically. He did it in a very compelling way, as he always does. We are grateful for his leadership on these issues.

I stood before the Senate a couple of days ago and talked about the fact that we have a war in Iraq that we cannot forget about. In fact, if you listen to some of the news, you would think there are only one or two issues we have to worry about, but the war continues to be a central issue for the American people. We also have to be very concerned, as Senator DORGAN and others have reminded us, about the economy.

I was asked recently by a reporter—a couple of different reporters, actually—who said to me very simply—or asked me, I should say, very simply the question: Are we in recession? I answered them without blinking, without even stopping to think, because I know it is the truth, and the answer is yes, we are in a recession. I don't care about, nor do I need to wait, for some academic dissertation or some economist to tell us what is the textbook definition of a recession. We are in a recession. We have to do something about it. I think it is as plain as could be.

So what do we do about this recession? How do we respond to it? Thank goodness, there is a lot of bipartisanship on this issue, both parties coming together to try to do something about it. But I think we have to describe for people in Washington what this means for real people. I will talk about it in the context of Pennsylvania and Pennsylvania families, by way of highlighting this issue. I ask unanimous consent to have printed in the RECORD two pages I am going to be referring to from the Joint Economic Committee, Pennsylvania Economic Snapshot, dated January 23, 2008.

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

Over the past seven years, the Bush economy has made it more difficult for most Americans to get ahead. Under the current Administration, the basic goals of the American dream—raising a family, owning a home, paying for college, saving for retirement—have become intimidating hurdles for hardworking people. Slow growth in families' wages has been compounded by double-digit cost increases for health care, energy, and college tuition. Democrats are fighting for a new direction in economic policy, aimed at restoring broad-based growth, reducing the high costs of health care and energy, improving retirement security, and increasing prosperity for all Americans.

REAL HOUSEHOLD INCOME HAS STAGNATED; JOB CREATION HAS BEEN ABYSMAL

Pennsylvania's Median Household Income Increased By Only 1.3 Percent Since 2000. In Pennsylvania, real median household income averaged $48,148 over the 2005–2006 period, compared with $47,524 over the 1999–2000 period. Despite strong gains in productivity, workers' wages are only marginally higher than they were 25 years ago, and nationally, the inflation-adjusted income of a typical American household fell by $962, or 2.0 percent, to $48,201 between 2000 and 2006.

Pennsylvania's Job Growth Under the Current Administration Lags Far Behind Previous Presidents. The current president is competing with his father for the worst job creation record of any president since Herbert Hoover. Since taking office in January 2001, only 6 million jobs have been created, as compared with 20.8 million new jobs created during the Clinton administration at the same point in time. In Pennsylvania, only 101,900 new jobs have been created since Bush took office—or 1,200 new jobs per month—as compared with a total of 528,900 new jobs under Clinton—or 6,400 per month. In particular, the manufacturing sector has been hit hard by the economy under the current Administration, with payrolls nationwide declining by 3.2 million jobs between January 2001 and December 2007, and by 202,000 in Pennsylvania over the same period.

FAMILIES ARE FEELING THE SQUEEZE OF RISING EXPENSES

Rising Energy Costs Lead to Higher Gas and Home Heating Prices for Pennsylvania Residents. Rising energy costs are making it more difficult for Pennsylvania families to stretch their household budgets. In January 2001, the average retail price per gallon of gasoline in Pennsylvania was $1.43. The average gas price per gallon is $3.15 as of January 18, 2008. When adjusted for inflation, this represents an increase of 86 percent. At the same time, this winter is expected to hit Pennsylvania families hard, as average home heating costs have risen by 18.9 percent per household from $1,216 to $1,447 in the past year.

Health Care Premiums Rose 45.8 Percent in Pennsylvania Since 2000. In 2005, the average

inflation-adjusted health care premium for family coverage in Pennsylvania was $11,470, a 45.8 percent increase from 2000, while the average premium for individual coverage was $4,332, an increase of 50.0 percent since 2000. Nationwide, the inflation-adjusted average monthly premium for family health coverage in the United States rose by 39.7 percent from 2000 to 2005, even as real median household income declined by 2.7 percent over the same period.

Pennsylvania College Tuition Rose 32.5 Percent Since 1999. Pennsylvania parents of college age students have also been hard hit under the current Administration, as inflation-adjusted tuition for Pennsylvania's four-year public colleges increased 32.5 percent between the 1999–2000 and 2005–2006 school years to $8,994 per year. With that $2,208 increase over just six years, Pennsylvania families are finding it more and more difficult to afford to send their children to college, and they are not alone. Nationally, public college tuition has risen at more than double the rate of inflation in recent years. Between the 1999–2000 and 2005–2006 academic years, average inflation-adjusted tuition and fees at U.S. public colleges and universities increased by 36.3 percent.

Child Care Costs For Two-Child Families Averaged $1,273 Per Month in Pennsylvania. Child care continues to be a hefty burden on the budgets of Pennsylvania parents, with inflation-adjusted monthly care for an infant averaging $689, and monthly care for two children averaging $1,273.

THE HOUSING CRISIS IS ERODING HOME WEALTH, HURTING THE BROADER ECONOMY

The Subprime Mortgage Crisis Is Impacting All Pennsylvania Homeowners. Under the Bush administration's watch, unregulated mortgage originators were given financial incentives to sell risky, unaffordable subprime mortgages to vulnerable borrowers. As these adjustable rate mortgages reset to higher rates, the number of families unable to afford their payments and threatened with foreclosure is skyrocketing. In Pennsylvania, mortgages in delinquency have increased from 81,900 in the third quarter of 2005 to 121,100 in the third quarter of 2007. According to a recent report published by the Joint Economic Committee (JEC), the number of subprime foreclosures in Pennsylvania will total 45,500 between third quarter 2007 and the end of 2009.

High Foreclosure Rates Drag Down Neighboring Property Values and Household Wealth. The mortgage foreclosure crisis will have severe costs for Pennsylvania homeowners, not only in direct costs, but in its effect on home values and declining property taxes. According to the JEC, subprime mortgage-related foreclosures will cost Pennsylvania $2.46 billion over the second half of 2007 through the end of 2009. Nationally, the expected economic costs of forecast foreclosures total nearly $104 billion. Moreover, these numbers do not include the larger effects that the foreclosure crisis may have on the economy. Home prices, which drove up consumer spending when they rose earlier this decade, are in decline now, and consumers may begin to draw back on spending, negatively impacting GDP growth.

THE ECONOMIC COST OF THE IRAQ WAR IS STAGGERING

The Iraq War Will Cost $36,900 Per Pennsylvania Household. According to the JEC's recent report, the direct and indirect costs of the Iraq War will be massive, especially if the Bush administration continues to keep large numbers of troops there. Even assuming significant force reductions, the cost of the Iraq War will total $107 billion for Pennsylvania taxpayers by 2017; the total cost to the country will be an estimated $2.8 trillion.

POVERTY REMAINS PERSISTENTLY HIGH

In Pennsylvania, 1.4 million Residents Were Living in Poverty Over Last Two Years. In Pennsylvania, 1.4 million residents were living below the poverty line during the 2005–2006 period, an increase of 28.8 percent over the 1999–2000 period. Unfortunately, this problem is not confined to the adult population as 17 percent of Pennsylvania's children are living below the poverty line. Nationally, 12.3 percent of Americans were living in poverty as of 2006.

THE RANKS OF THE UNINSURED CONTINUE TO GROW

Over Last Two Years, 1.2 million Pennsylvania Residents Had No Health Insurance. A growing number of Pennsylvania residents are living without health insurance. During the 2005–2006 period, an average of 1.2 million Pennsylvania residents—9.9 percent of the state's population—had no health insurance; this was 274,000 more than during the 1999–2000 period. Furthermore, 7.4 percent of Pennsylvania's children had no health insurance. Across the country, the number of Americans without health insurance totals 47 million, up 8.6 million since the current Administration took office.

Mr. CASEY. Madam President, I want you to know I will not read these two pages, but I want to highlight a couple of data points in this summary—two pages, four or five highlights.

First, delinquencies, mortgage delinquencies, are up from the third quarter of 2005 to the third quarter of 2007, up by some 40,000 mortgages, just in Pennsylvania. Then, stretching back over a couple of years, we look at gas prices. From January of 2001 forward, up 86 percent, gas prices in Pennsylvania; home heating costs, in 1 year—1 year—up 18.9 percent; health insurance for families. If you look at it over a 5-year period, 2000 to 2005, health care premiums for families are up 45.8 percent. And one more: Childcare costs per month for two children, which is the case for a lot of families, childcare costs per month for two children is averaging $1,273.

That is just in one State and a couple of highlights. We could go on and on, but I won't.

There are the economic realities for Pennsylvania families, and we could add more to that list. So when a reporter or anyone else asks me, Are we in a recession, my answer is, You bet we are. A lot of families in Pennsylvania and across the country think we have been in a recession, or their families have been in a kind of recession for years now—not just since the holidays, not just in the last year, but for many years. So I think the data is compelling and overwhelming and irrefutable.

But let's think about it even more broadly. In terms of health care, Families USA did a report this past November—again, just in Pennsylvania—and they have done it for a lot of States, but Pennsylvania was the first one they announced. I will read one sentence from a long report, one sentence from this report by Families USA on the issue of health care. I think one sentence tells the story. During this same period that they referred to earlier in the report, meaning 2000 to 2007, during that 7-year period:

The average worker's share of annual family premiums rose from $1,656 to $3,281, an increase of more than 98 percent.

What they are saying in that one sentence is that in the State of Pennsylvania, over that 7-year period of time, the workers' share of annual family premiums went up 98 percent—98 percent in one State, the workers' share on health care. I don't even need to refer to the rest of the report. That tells the story.

So that is all the information. That is all the data. But what do we do with it? We saw in the news today and yesterday that there has been an agreement of sorts that has been brought about on the economy, and I think we should all be encouraged by the fact that the President and the Congress are working together on a stimulus package. But what does that mean, and what are the elements of it? I won't go into all of it, but I think one thing we have to be guided by—and we have heard over and over again this sound bite in Washington, but we should say it again. These are not my words. We have all quoted these, but they summarize it pretty well: Whatever stimulus package we have in place for the American people has to be timely, has to be temporary, and has to be targeted. Another way to say that is we have to put in place policies for the stimulus that we know will work.

I want to refer to a chart here that tells that story pretty well. We have seen this chart before, but it bears repeating. Other Members of the Senate have used it. The targeted stimulus proposals, the ones that deliver far more bang for the buck. It is very simple: What do you get for a buck in stimulus expenditure?

We know this from the data. This isn't some Democratic operative; this is what Mark Zandi from economy.com put forth: food stamps, spend a dollar and get $1.73 back; unemployment, spend a dollar in stimulus, get $1.64 back. States are in a fiscal mess. We won't go into that, but if you spend a dollar, you get $1.36 back in return. Then it goes down from pay, with payroll tax rebates and temporary income tax. We know that expending tax cuts for the wealthy, which is on the table right now, doesn't work. We know what works.

We have to make sure, in my judgment, that if we put together a bipartisan stimulus package—and we still have to work on this in the Senate—that we invest in strategies that will work, not what we would like to do or hope to do or not what one side or the other believes is a good idea. We have to invest in strategies that work: Food stamps, not just because it helps individual Americans and their families, but we know by investing in that strategy, they will spend the money quickly. We need people to spend money very rapidly to dig us out of the hole we are in. Food stamps, unemployment benefits, and aid to the States—we have to

provide investments in strategies that will work.

Another thing we have to do is make sure that when we are dealing with the housing crisis, we spend dollars and have strategies that lead to help in the short run. I was one of three Senators who put in the budget $180 million for counseling. It is not some far-reaching plan to deal with the subprime crisis; it is dollars right now. In fact, the dollars for counseling would get dollars into the hands of nonprofit groups in the country to help families out of this next month, so to speak. Those dollars—$180 million—will begin being spent in March. That will work. Those counselors are experts. They are certified, and they know how to work with families. We have to invest in that.

I will conclude with this thought. If you walked through the streets of New Orleans after Hurricane Katrina, I don't think many people would be scratching their heads and wondering whether that was a category 5 hurricane or a category 4. It didn't matter; it was devastating. I don't think we ought to wonder whether an economist tells us we are in a recession. We are in a recession.

We know something about the aftermath of Hurricane Katrina. When all of the reporting was done, when that horrific nightmare engulfed so many families, who were washed out of their homes and their hopes and dreams were gone, I think we learned a lot from what didn't happen before the hurricane.

We know as Americans that devastation doesn't always come with the awful swiftness of a hurricane. Sometimes it happens much more gradually, over time, when you don't make the right decision and prioritize and when you don't make the right investments. We are not doing that right now. We are not making the investments we should make in children in the dawn of their lives. We are not making an investment in fiscal responsibility to the extent we should. We are not investing in our infrastructure. Maybe all of those decisions can lead to a kind of slower moving Katrina or slower moving hurricane, which is an economic hurricane, or a devastating hurricane that dashes the hopes and dreams of children and their families.

So when we make a decision about what will be in the stimulus package to help people in the short run, we also have to get to work on a long-term strategy for economic growth, investing in our children, and making sure families can grow. I am concerned about how we are doing that or not doing it in Washington. We should learn from the horrific nightmare that was Hurricane Katrina. We should learn from, frankly, information such as this that tells us what will work in the short run to get us out of this mess and stimulate the economy and get dollars in the hands of Americans who will spend the dollars, which will jumpstart or jolt our economy. I think we can come together and do that. I don't think what we have seen so far gets us to that point.

I am grateful for the opportunity to talk about these issues. I know they are central not just to Pennsylvania and our families but in States such as Minnesota and other States across this country. We have a lot more work to do to get the stimulus package right to help our economy.

HONORING OUR ARMED FORCES

LANCE CORPORAL CAMERON M. BABCOCK

Mr. BAYH. Madam President, I rise today with a heavy heart and deep sense of gratitude to honor the life of a brave soldier from Plymouth, IN. LCpl Cameron Babcock, 19 years old, died January 20th at Twentynine Palms Marine Base in California. Lance Corporal Babcock was killed as the result of a firearms accident in his barracks. Cameron was a committed soldier and servant to his country.

Cameron was a 2006 graduate of Plymouth High School and was a gifted musician. He played the trumpet in the Big Red Marching Band and was a member of the Plymouth High School Advanced Jazz Band. In 2005, he competed at the State Jazz Festival in LaPorte with the Advanced Jazz Band. He was also a member of the Wind Ensemble, comprised of some of the school's top music students. Cameron also played the guitar and enjoyed four-wheeling.

After graduation, Cameron fulfilled a lifelong goal by enlisting in the Marines, telling his family it was what he had always hoped to do. He was promoted to private first class after boot camp and was a rifleman in the infantry. With his assignment to Kilo Company, 3rd Battalion, 7th Marine Regiment, 1st Marine Division, Cameron served an exemplary tour in Iraq in support of Operation Iraqi Freedom. He was a decorated soldier and received numerous awards during his tour in Iraq including the National Defense Service Medal, the Iraqi Campaign Medal, the Global War on Terrorism Service Medal, the Combat Action Ribbon, the Sea Service Deployment Ribbon and the Certificate of Commendation.

Cameron was awaiting his second tour of duty in Iraq when he died. He is survived by his parents, Jeffery and Ann Smith Babcock; his sisters Kailey, Abigail, and Hope Babcock; and his brother, Samuel Babcock. The Babcock family resides in Plymouth.

Today, I join Cameron'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 Cameron. Today and always, Cameron will be remembered by family members, friends and fellow Hoosiers as a true American hero, and we honor the example he set in serving his country.

It is my sad duty to enter the name of LCpl Cameron M. Babcock in the RECORD of the U.S. Senate for his service to this country and for his profound commitment to freedom, democracy and peace. When I think about the unfortunate pain that comes with the loss of our heroes, I hope that families like Cameron'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 Cameron.

MAJOR ANDREW J. OLMSTED

Mr. SALAZAR. Madam President, I rise today in honor of MAJ Andrew Olmsted, who was killed on January 3 in an attack near Sadiyah, Iraq. Major Olmsted was assigned to the 1st Brigade of the 1st Infantry Division out of Fort Riley, KS, but he and his wife, Amanda Wilson, lived together in Colorado Springs, CO. Andrew was 37 years old. He was the first American casualty in Iraq of 2008.

Major Olmsted was a proud soldier whose sense of duty took him to Iraq—whose commitment to his fellow soldiers earned him their deepest respect—and whose compassion put him in the line of fire the day he died.

Andrew was also an exceptionally talented writer. He shared his experiences and perspectives in Iraq with the world on blogs, including one he wrote for the Rocky Mountain News entitled ''From the Front Lines.'' The thousands of readers who followed Andrew's deployment had the privilege of his frank, thoughtful, stirring, and often humorous take on the war, the Army, and politics.

For a writer and reporter as gifted as Andrew, it is hard to find the words to properly honor his life and his sacrifice. I would rather let him speak for himself and reflect on his memory by sharing with my colleagues portions of Major Olmsted's final posting. He asked a friend to post this on his blog in the event of his death. In its eloquence, power, humor, and tragedy, it is one small way in which we may remember the mark that Andrew made on our world:

> This is an entry I would have preferred not to have published, but there are limits to what we can control in life, and apparently I have passed one of those limits. . . .
>
> What I don't want this to be is a chance for me, or anyone else, to be maudlin. I'm dead. That sucks, at least for me and my family and friends. But all the tears in the world aren't going to bring me back, so I would prefer that people remember the good things about me rather than mourning my loss. (If it turns out a specific number of tears will, in fact, bring me back to life, then by all means, break out the onions.)
>
> I had a pretty good life, as I noted above. Sure, all things being equal I would have preferred to have more time, but I have no business complaining with all the good fortune I've enjoyed in my life. So if you're up for

that, put on a little 80s music (preferably vintage 1980–1984), grab a Coke and have a drink with me. If you have it, throw ''Freedom Isn't Free'' from the Team America soundtrack in; if you can't laugh at that song, I think you need to lighten up a little. I'm dead, but if you're reading this, you're not, so take a moment to enjoy that happy fact. . . .

I suppose I should speak to the circumstances of my death. It would be nice to believe that I died leading men in battle, preferably saving their lives at the cost of my own. More likely I was caught by a marksman or an IED. But if there is an afterlife, I'm telling anyone who asks that I went down surrounded by hundreds of insurgents defending a village composed solely of innocent women and children. It'll be our little secret, ok?

I do ask (not that I'm in a position to enforce this) that no one try to use my death to further their political purposes. I went to Iraq and did what I did for my reasons, not yours. My life isn't a chit to be used to bludgeon people to silence on either side. If you think the U.S. should stay in Iraq, don't drag me into it by claiming that somehow my death demands us staying in Iraq. If you think the U.S. ought to get out tomorrow, don't cite my name as an example of someone's life who was wasted by our mission in Iraq. I have my own opinions about what we should do about Iraq, but since I'm not around to expound on them I'd prefer others not try and use me as some kind of moral capital to support a position I probably didn't support. Further, this is tough enough on my family without their having to see my picture being used in some rally or my name being cited for some political purpose. You can fight political battles without hurting my family, and I'd prefer that you did so.

On a similar note, while you're free to think whatever you like about my life and death, if you think I wasted my life, I'll tell you you're wrong. We're all going to die of something. I died doing a job I loved. When your time comes, I hope you are as fortunate as I was. . . .

Those who know me through my writings on the Internet over the past five-plus years probably have wondered at times about my chosen profession. While I am not a Libertarian, I certainly hold strongly individualistic beliefs. Yet I have spent my life in a profession that is not generally known for rugged individualism. Worse, I volunteered to return to active duty knowing that the choice would almost certainly lead me to Iraq. The simple explanation might be that I was simply stupid, and certainly I make no bones about having done some dumb things in my life, but I don't think this can be chalked up to stupidity. Maybe I was inconsistent in my beliefs; there are few people who adhere religiously to the doctrines of their chosen philosophy, whatever that may be. But I don't think that was the case in this instance either.

As passionate as I am about personal freedom, I don't buy the claims of anarchists that humanity would be just fine without any government at all. There are too many people in the world who believe that they know best how people should live their lives, and many of them are more than willing to use force to impose those beliefs on others. A world without government simply wouldn't last very long; as soon as it was established, strongmen would immediately spring up to establish their fiefdoms. So there is a need for government to protect the people's rights. And one of the fundamental tools to do that is an army that can prevent outside agencies from imposing their rules on a society. A lot of people will protest that argument by noting that the people we are fighting in Iraq are unlikely to threaten the rights of the average American. That's certainly true; while our enemies would certainly like to wreak great levels of havoc on our society, the fact is they're not likely to succeed. But that doesn't mean there isn't still a need for an army (setting aside debates regarding whether ours is the right size at the moment). Americans are fortunate that we don't have to worry too much about people coming to try and overthrow us, but part of the reason we don't have to worry about that is because we have an army that is stopping anyone who would try.

Soldiers cannot have the option of opting out of missions because they don't agree with them: that violates the social contract. The duly-elected American government decided to go to war in Iraq. (Even if you maintain President Bush was not properly elected, Congress voted for war as well.) As a soldier, I have a duty to obey the orders of the President of the United States as long as they are constitutional. I can no more opt out of missions I disagree with than I can ignore laws I think are improper. I do not consider it a violation of my individual rights to have gone to Iraq on orders because I raised my right hand and volunteered to join the army. Whether or not this mission was a good one, my participation in it was an affirmation of something I consider quite necessary to society. So if nothing else, I gave my life for a pretty important principle; I can (if you'll pardon the pun) live with that. . . .

I write this in part, admittedly, because I would like to think that there's at least a little something out there to remember me by. Granted, this site will eventually vanish, being ephemeral in a very real sense of the word, but at least for a time it can serve as a tiny record of my contributions to the world. But on a larger scale, for those who knew me well enough to be saddened by my death, especially for those who haven't known anyone else lost to this war, perhaps my death can serve as a small reminder of the costs of war. Regardless of the merits of this war, or of any war, I think that many of us in America have forgotten that war means death and suffering in wholesale lots. A decision that for most of us in America was academic, whether or not to go to war in Iraq, had very real consequences for hundreds of thousands of people. Yet I was as guilty as anyone of minimizing those very real consequences in lieu of a cold discussion of theoretical merits of war and peace. Now I'm facing some very real consequences of that decision; who says life doesn't have a sense of humor? . . .

But for those who knew me and feel this pain, I think it's a good thing to realize that this pain has been felt by thousands and thousands (probably millions, actually) of other people all over the world. That is part of the cost of war, any war, no matter how justified. If everyone who feels this pain keeps that in mind the next time we have to decide whether or not war is a good idea, perhaps it will help us to make a more informed decision. Because it is pretty clear that the average American would not have supported the Iraq War had they known the costs going in. I am far too cynical to believe that any future debate over war will be any less vitriolic or emotional, but perhaps a few more people will realize just what those costs can be the next time.

This may be a contradiction of my above call to keep politics out of my death, but I hope not. Sometimes going to war is the right idea. I think we've drawn that line too far in the direction of war rather than peace, but I'm a soldier and I know that sometimes you have to fight if you're to hold onto what you hold dear. But in making that decision, I believe we understate the costs of war; when we make the decision to fight, we make the decision to kill, and that means lives and families destroyed. Mine now falls into that category; the next time the question of war or peace comes up, if you knew me at least you can understand a bit more just what it is you're deciding to do, and whether or not those costs are worth it.

''This is true love. You think this happens every day?''—Westley, The Princess Bride

''Good night, my love, the brightest star in my sky.''—John Sheridan, Babylon 5

This is the hardest part. While I certainly have no desire to die, at this point I no longer have any worries. That is not true of the woman who made my life something to enjoy rather than something merely to survive. She put up with all of my faults, and they are myriad, she endured separations again and again . . . I cannot imagine being more fortunate in love than I have been with Amanda. Now she has to go on without me, and while a cynic might observe she's better off, I know that this is a terrible burden I have placed on her, and I would give almost anything if she would not have to bear it. It seems that is not an option. I cannot imagine anything more painful than that, and if there is an afterlife, this is a pain I'll bear forever.

I wasn't the greatest husband. I could have done so much more, a realization that, as it so often does, comes too late to matter. But I cherished every day I was married to Amanda. When everything else in my life seemed dark, she was always there to light the darkness. It is difficult to imagine my life being worth living without her having been in it. I hope and pray that she goes on without me and enjoys her life as much as she deserves. I can think of no one more deserving of happiness than her.

''I will see you again, in the place where no shadows fall.''—Ambassador Delenn, Babylon 5

I don't know if there is an afterlife; I tend to doubt it, to be perfectly honest. But if there is any way possible, Amanda, then I will live up to Delenn's words, somehow, some way. I love you.

Mr. President, our thoughts and prayers are with Amanda, Andrew's parents, and all of his family. May they soon find comfort and respite from their grief. May we always remember Andrew for his life, service, and sacrifice. And may countless others have the blessing of reading his words.

STAFF SERGEANT JUSTIN R. WHITING

Madam President, I rise today to honor the memory of SSG Justin R. Whiting, a Green Beret with the 3rd Battalion, 5th Special Forces Group, out of Fort Campbell, KY. On January 19, Sergeant Whiting was leading a convoy through the streets of Mosul, Iraq, when a bomb exploded near his vehicle. He was killed at 27 years old.

Sergeant Whiting was born in Belton, TX, but at a young age moved to Hancock, NY, where he developed a love for the great outdoors. Justin was an avid hunter who reveled in the rugged landscape near the Delaware River.

Those who knew him describe Sergeant Whiting as an adventurer. It was this virtue, coupled with his deep-seated love for his country, which led him to join the Army just 2 months after his high school graduation.

In the Army, he chose the most difficult path he could pursue, that of becoming a Green Beret. The Special

Forces soldiers I know are the pride of our country. All at once, they are soldiers, intelligence officers, diplomats, tacticians, linguists, trainers, and advisors. They are at the tip of the spear of our national defense. The Green Beret that they wear, said President Kennedy, is ''a symbol of excellence, a badge of courage, a mark of distinction in the fight for freedom.''

Sergeant Whiting was on his third tour in Iraq, on a mission to help bring security and stability to a region torn by violence and tragedy. Every day, he and his unit put themselves in harm's way to give Iraqi citizens a chance at a society governed by the rule of law, free from the threats of sectarian strife, terrorism, or autocratic rule. He served bravely and was highly decorated. Among many other honors, he earned the Bronze Star, one of the highest awards given for combat service, for his bravery and selflessness.

For those of us who did not know Justin personally, it is difficult to know what inspired his extraordinary sense of duty or what fueled his courage on the battlefield. Alexander Hamilton, a Founding Father and an Army officer, explained that ''There is a certain enthusiasm in liberty that makes human nature rise above itself in acts of bravery and heroism.'' I imagine that Justin found his strength in many sources—friends, family, and fellow soldiers—but I imagine that he, too, was motivated by an enthusiasm for liberty and a passion for justice. In his life, he consistently chose the path that was most challenging so that he could offer our country his highest service. He was a true patriot.

To Justin's mother, Estelline, to his father, Randall, to his sister, Amanda, and to his brother, Nathan, our thoughts and prayers are with you. I hope that in time, your grief will be assuaged by the pride you must feel in Justin's service and by the honor he bestowed upon his country. May we never forget his service and his sacrifice.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Neiman, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations and withdrawals which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

S. 2556. A bill to extend the provisions of the Protect America Act of 2007 for an additional 30 days.

MEASURES READ THE FIRST TIME

The following bill was read the first time:

S. 2557. A bill to extend the Protect America Act of 2007 until July 1, 2009.

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–4773. A communication from the Deputy Director, Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the report of a rule entitled ''Premium Rates; Payment of Premiums; Flat Premium Rates, Variable Rate Premium Cap, and Termination Premium; Deficit Reduction Act of 2005; Pension Protection Act of 2006'' (RIN1212–AB10) received on January 15, 2008; to the Committee on Health, Education, Labor, and Pensions.

EC–4774. A communication from the Deputy Director, Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the report of a rule entitled ''Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits'' (72 FR 71071) received on January 15, 2008; to the Committee on Health, Education, Labor, and Pensions.

EC–4775. 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 ''Amendment to the Current Good Manufacturing Practice Regulations for Finished Pharmaceuticals'' (Docket No. 2007N–0280) received on January 15, 2008; to the Committee on Health, Education, Labor, and Pensions.

EC–4776. 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 ''Over-the-Counter Vaginal Contraceptive and Spermicide Drug Products Containing Nonoxynol 9; Required Labeling'' (RIN0910–AF44) received on January 15, 2008; to the Committee on Health, Education, Labor, and Pensions.

EC–4777. 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 ''Medical Devices; Hematology and Pathology Devices: Reclassification of Automated Blood Cell Separator Device Operating by Centrifugal Separation Principle'' (Docket No. 2005N–0017) received on January 15, 2008; to the Committee on Health, Education, Labor, and Pensions.

EC–4778. 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 ''Secondary Direct Food Additives Permitted in Food for Human Consumption'' (Docket No. 2006F–0409) received on January 15, 2008; to the Committee on Health, Education, Labor, and Pensions.

EC–4779. A communication from the Assistant General Counsel for Regulatory Services, Office of the Chief Financial Officer, Department of Education, transmitting, pursuant to law, the report of a rule entitled ''Direct Grant Programs'' (RIN1890–AA15) received on January 15, 2008; to the Committee on Health, Education, Labor, and Pensions.

EC–4780. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, an annual report relative to the Health Care Fraud and Abuse Control Program for fiscal year 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–4781. A communication from the Acting Secretary of Veterans Affairs, transmitting, pursuant to law, the Department's Performance and Accountability Report for fiscal year 2007; to the Committee on Homeland Security and Governmental Affairs.

EC–4782. A communication from the Chairman and Chief Executive Officer, Farm Credit Administration, transmitting, pursuant to law, the Administration's Performance and Accountability Report for fiscal year 2007; to the Committee on Homeland Security and Governmental Affairs.

EC–4783. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, the Semiannual Report of the Department's Inspector General for the period of April 1, 2007, through September 30, 2007; to the Committee on Homeland Security and Governmental Affairs.

EC–4784. A communication from the Chairman and President, Export-Import Bank of the United States, transmitting, pursuant to law, the Semiannual Report of the Inspector General for the period ending September 30, 2007; to the Committee on Homeland Security and Governmental Affairs.

EC–4785. A communication from the Inspector General, General Services Administration, transmitting, pursuant to law, the Semiannual Report for the period ending September 30, 2007; to the Committee on Homeland Security and Governmental Affairs.

EC–4786. A communication from the Chairman, National Endowment for the Arts, transmitting, pursuant to law, a report relative to the competitive sourcing efforts of fiscal year 2007; to the Committee on Homeland Security and Governmental Affairs.

EC–4787. A communication from the Chairman, National Capital Planning 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–4788. A communication from the Executive Director, Morris K. Udall Foundation, transmitting, pursuant to law, the Foundation's Performance and Accountability Report for fiscal year 2007; to the Committee on Homeland Security and Governmental Affairs.

EC–4789. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 17–227, ''Department of Health Care Finance Establishment Act of 2007'' received on January 14, 2008; to the Committee on Homeland Security and Governmental Affairs.

EC–4790. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 17–236, ''Arbitration Act of 2007'' received on January 14, 2008; to the Committee on Homeland Security and Governmental Affairs.

EC–4791. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 17–237, ''Multi-Unit Real Estate Tax Rate Clarification Act of 2007'' received on January 14, 2008; to the Committee on Homeland Security and Governmental Affairs.

EC–4792. A communication from the Chairman, Council of the District of Columbia,

transmitting, pursuant to law, a report on D.C. Act 17–238, ''Georgia Commons Real Property Tax Exemption and Abatement Act of 2007'' received on January 14, 2008; to the Committee on Homeland Security and Governmental Affairs.

EC–4793. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 17–228, ''District of Columbia Emancipation Day Parade Clarification Amendment Act of 2007'' received on January 14, 2008; to the Committee on Homeland Security and Governmental Affairs.

EC–4794. A communication from the Deputy Assistant Administrator, Office of Diversion Control, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Reexportation of Controlled Substances'' (RIN1117–AB00) received on January 15, 2008; to the Committee on the Judiciary.

EC–4795. A communication from the Assistant Attorney General for Administration, Department of Justice, transmitting, pursuant to law, an annual report relative to the Department's competitive sourcing efforts during fiscal year 2007; to the Committee on the Judiciary.

EC–4796. A communication from the Deputy Assistant Administrator, Office of Diversion Control, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Definition of 'Positional Isomer' as it Pertains to the Control of Controlled Substances'' (RIN1117–AA94) received on January 15, 2008; to the Committee on the Judiciary.

EC–4797. A communication from the Principal Deputy Assistant Attorney General, Office of Legislative Affairs, Department of Justice, transmitting, pursuant to law, a report relative to the administration of the Foreign Agents Registration Act for the six months ending December 31, 2006; to the Committee on the Judiciary.

EC–4798. A communication from the Deputy Associate General Counsel for Regulatory Affairs, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Minimum Standards for Drivers' Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes'' (RIN1601–AA37) received on January 11, 2008; to the Committee on the Judiciary.

EC–4799. A communication from the Acting Clerk of the Court, U.S. Court of Federal Claims, transmitting, pursuant to law, the Court's annual report for the year ended September 30, 2007; to the Committee on the Judiciary.

EC–4800. A communication from the Principal Deputy Assistant Attorney General, Office of Legislative Affairs, Department of Justice, transmitting, pursuant to law, the annual report of the Office of Privacy and Civil Liberties for calendar year 2007; to the Committee on the Judiciary.

EC–4801. A communication from the Director of Regulations Management, Veterans Benefits Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Education: Approval of Accredited Courses for VA Education Benefits'' (RIN2900–AM80) received on January 15, 2008; to the Committee on Veterans' Affairs.

EC–4802. A communication from the Director of Regulations Management, Veterans Benefits Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Dependents' Educational Assistance'' (RIN2900–AM72) received on January 15, 2008; to the Committee on Veterans' Affairs.

EC–4803. A communication from the National President, Women's Army Corps Veterans' Association, transmitting, pursuant to law, an inquiry into their need to submit an annual report; to the Committee on Veterans' Affairs.

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. REID:

S. 2557. A bill to extend the Protect America Act of 2007 until July 1, 2009; read the first time.

By Mr. THUNE:

S. 2558. A bill to amend the Clean Air Act to modify a definition; to the Committee on Environment and Public Works.

By Mr. DODD (for himself and Mr. MCCAIN):

S. 2559. A bill to amend title II of the Social Security Act to increase the level of earnings under which no individual who is blind is determined to have demonstrated an ability to engage in substantial gainful activity for purposes of determining disability; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mrs. FEINSTEIN (for herself and Mrs. BOXER):

S. Res. 426. A resolution congratulating the Stanford University women's cross country team on winning the 2007 National Collegiate Athletic Association Division I Championship; considered and agreed to.

By Mrs. FEINSTEIN (for herself and Mrs. BOXER):

S. Res. 427. A resolution congratulating the University of California at Berkeley men's water polo team for winning the 2007 National Collegiate Athletic Association Division I Championship; considered and agreed to.

By Mrs. FEINSTEIN (for herself and Mrs. BOXER):

S. Res. 428. A resolution congratulating the University of Southern California women's soccer team on winning the 2007 National Collegiate Athletic Association Division I Championship; considered and agreed to.

By Mrs. DOLE (for herself, Mr. LIEBERMAN, Mr. BURR, Mr. KENNEDY, Ms. SNOWE, and Ms. CANTWELL):

S. Res. 429. A resolution honoring the brave men and women of the United States Coast Guard whose tireless work, dedication, and commitment to protecting the United States have led to the confiscation of over 350,000 pounds of cocaine at sea during 2007; to the Committee on Commerce, Science, and Transportation.

By Mr. KENNEDY (for himself, Mr. MCCAIN, Mr. AKAKA, Mr. BAYH, Mr. BURR, Ms. CANTWELL, Mr. CARPER, Mr. CASEY, Mrs. CLINTON, Mr. COLEMAN, Ms. COLLINS, Mr. DODD, Mr. DURBIN, Mr. FEINGOLD, Mr. GRASSLEY, Mr. ISAKSON, Mr. KERRY, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mrs. LINCOLN, Mr. MENENDEZ, Ms. MURKOWSKI, Mr. OBAMA, and Mr. SPECTER):

S. Res. 430. A resolution designating January 2008 as ''National Mentoring Month''; to the Committee on the Judiciary.

By Mr. FEINGOLD (for himself, Mr. SUNUNU, Mr. CARDIN, Mr. KERRY, Mr. BROWN, Mr. DODD, Mr. KENNEDY, Mr. MENENDEZ, Mr. DURBIN, Mrs. BOXER, Mr. BIDEN, Mrs. CLINTON, Mr. OBAMA, Mr. HARKIN, Mr. COLEMAN, Mr. HAGEL, Mr. BROWNBACK, and Ms. SNOWE):

S. Res. 431. A resolution calling for a peaceful resolution to the current electoral crisis in Kenya; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 206

At the request of Mrs. FEINSTEIN, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 206, a bill to amend title II of the Social Security Act to repeal the Government pension offset and windfall elimination provisions.

S. 269

At the request of Mr. SPECTER, his name was added as a cosponsor of S. 269, a bill to amend the Internal Revenue Code of 1986 to increase and permanently extend the expensing of certain depreciable business assets for small businesses.

S. 937

At the request of Mrs. CLINTON, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 937, a bill to improve support and services for individuals with autism and their families.

S. 1001

At the request of Mrs. HUTCHISON, the name of the Senator from Mississippi (Mr. WICKER) was added as a cosponsor of S. 1001, a bill to restore Second Amendment rights in the District of Columbia.

S. 1287

At the request of Mr. SMITH, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. 1287, a bill to amend the Internal Revenue Code of 1986 to allow an offset against income tax refunds to pay for State judicial debts that are past-due.

S. 1437

At the request of Ms. STABENOW, the name of the Senator from Tennessee (Mr. CORKER) was added as a cosponsor of S. 1437, a bill to require the Secretary of the Treasury to mint coins in commemoration of the semicentennial of the enactment of the Civil Rights Act of 1964.

S. 1464

At the request of Mr. FEINGOLD, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 1464, a bill to establish a Global Service Fellowship Program, and for other purposes.

S. 2209

At the request of Mr. SPECTER, his name was added as a cosponsor of S. 2209, a bill to amend the Internal Revenue Code of 1986 to provide incentives to improve America's research competitiveness, and for other purposes.

S. 2238

At the request of Mr. AKAKA, the name of the Senator from Ohio (Mr.

BROWN) was added as a cosponsor of S. 2238, a bill to amend the National Dam Safety Program Act to establish a program to provide grant assistance to States for the rehabilitation and repair of deficient dams.

S. 2368

At the request of Mr. PRYOR, the name of the Senator from North Carolina (Mr. BURR) was added as a cosponsor of S. 2368, a bill to provide immigration reform by securing America's borders, clarifying and enforcing existing laws, and enabling a practical employer verification program.

S. 2498

At the request of Mr. BINGAMAN, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 2498, a bill to authorize the minting of a coin to commemorate the 400th anniversary of the founding of Santa Fe, New Mexico, to occur in 2010.

S. 2509

At the request of Mr. INHOFE, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. 2509, a bill to amend the Safe Drinking Water Act to prevent the enforcement of certain national primary drinking water regulations unless sufficient funding is available or variance technology has been identified.

S. 2544

At the request of Mr. KENNEDY, the names of the Senator from Rhode Island (Mr. WHITEHOUSE) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. 2544, a bill to provide for a program of temporary extended unemployment compensation.

S. 2553

At the request of Mr. KERRY, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 2553, a bill to modify certain fees applicable under the Small Business Act for 2008, to make an emergency appropriation for certain small business programs, and to amend the Internal Revenue Code of 1986 to provide increased expensing for 2008, to provide a 5-year carryback for certain net operating losses, and for other purposes.

S. 2555

At the request of Mrs. BOXER, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 2555, a bill to permit California and other States to effectively control greenhouse gas emissions from motor vehicles, and for other purposes.

S. RES. 241

At the request of Mr. BROWN, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. Res. 241, a resolution expressing the sense of the Senate that the United States should reaffirm the commitments of the United States to the 2001 Doha Declaration on the TRIPS Agreement and Public Health and to pursuing trade policies that promote access to affordable medicines.

AMENDMENT NO. 3907

At the request of Mr. DODD, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of amendment No. 3907 intended to be proposed to S. 2248, an original bill to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. REID:

S. 2557. A bill to extend the Protect America Act of 2007 until July 1, 2009; read the first time.

Mr. REID. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be placed in the RECORD, as follows:

S. 2557

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF THE PROTECT AMERICA ACT OF 2007 UNTIL JULY 1, 2009.

Section 6(c) of the Protect America Act of 2007 (Public Law 110–55; 121 Stat. 557) is amended by striking ''180 days after the date of the enactment of this Act'' and inserting ''on July 1, 2009''.

By Mr. DODD (for himself and Mr. MCCAIN):

S. 2559. A bill to amend title II of the Social Security Act to increase the level of earnings under which no individual who is blind is determined to have demonstrated an ability to engage in substantial gainful activity for purposes of determining disability; to the Committee on Finance.

Mr. DODD. Mr. President, I rise today with my colleague from Arizona, Senator JOHN MCCAIN, to reintroduce legislation that we've sponsored in the past, the Blind Persons' Earnings Fairness Act of 2008. This legislation would restore the 20-year link between the earnings limits under Social Security for blind people and senior citizens. Restoring this connection would have a tremendous impact on the lives of many blind people, helping them become more self-sufficient and productive members of society and giving them the chance to live fuller lives.

Today there are nearly 1.3 million Americans who are blind, with 75,000 more becoming blind each year. With today's technology, blind and visually-impaired individuals can do just about anything. Blind people today are employed as farmers, lawyers, secretaries, nurses, managers, childcare workers, social workers, teachers, librarians, stockbrokers, accountants, and journalists, among many other things. Unfortunately the unemployment rate among the blind is still at an unconscionable 74 percent. The Federal Government should do all within its power to facilitate and encourage the blind and visually-impaired to enter the workforce. A variety of public and private initiatives have been launched over the years to provide the technologies and assistance necessary to educate and employ the blind at the same level as their sighted peers. For example, the National Federation of the Blind, NFB, has created an institute to utilize technological advancements for the blind in an effort to promote employment of the blind throughout the Nation. The NFB helps employers provide adaptive technology, consultation, and training so that they can better accommodate the needs of blind and visually-impaired employees. Now the challenge goes beyond giving the blind the tools to compete in the workforce, now we need to give hem the freedom to do so without fear of losing their essential Social Security benefits.

In 1996, Congress passed the Senior Citizens Freedom to Work Act, which broke the longstanding linkage between the treatment of blind people and seniors under Social Security. This allowed the earnings limit to be raised for seniors at a far faster rate than for the blind. As a result, the earnings limit for blind people has not kept up with modern day costs and earnings. So, blind people do not have the opportunity to increase their earnings without jeopardizing their Social Security benefits. In 2008, that limit was at $18,840. If a blind individual earns more than that, his or her Social Security benefits are not protected.

The purpose of the Senior Citizens Freedom to Work Act was to allow seniors to continue contributing to society as productive workers while still receiving needed social security benefits. Historically, the earnings test treatment of seniors and blind people was identical under Title II of the Social Security Act. With this legislation, we seek to restore that connection and do the same for the blind population of America as we have done for the seniors. We must provide blind people the same opportunity to be productive and contribute to their own stability. We must not discourage these individuals from working within an unreasonably low earnings limit.

The current earnings test provides a disincentive for the blind population, many of whom are working age and capable of productive work. Work provides one of the fundamental ways individuals express their talents and allows them to make a contribution to society and to their loved ones. Blind individuals face constant hurdles when it comes to employment. Parents, teachers, or counselors may tell them they can't do it. Employers sometimes don't even give them the opportunity to try. But blind people and others with severe visual impairments take great pride in being able to work, just like the rest of us. They are likely to respond favorably to an increase in the earnings test because they want to work. We don't want to leave in place yet another hurdle to employment for blind individuals with the Social Security earnings test. By allowing those

with visual impairments to work more without penalty, we would increase both their tax contribution and their purchasing power. By doing so we would also bring additional funds into the Social Security trust fund and the Federal Treasury.

I urge my colleagues to join me in sponsoring this important legislation to restore the fair and equal treatment for the blind citizens of America. The Blind Persons' Earnings Act of 2008 will provide the blind population with the same freedom and opportunities as our Nation's seniors and the rest of the citizens of this Nation.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be placed in the RECORD, as follows:

S. 2559

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 ''Blind Persons Earnings Fairness Act of 2008''.

SEC. 2. INCREASE IN AMOUNT DEMONSTRATING SUBSTANTIAL GAINFUL ACTIVITY IN THE CASE OF BLIND INDIVIDUALS.

(a) IN GENERAL.—Section 223(d)(4) of the Social Security Act (42 U.S.C. 423(d)(4)) is amended—

(1) by striking the second sentence of subparagraph (A); and

(2) by adding at the end the following new subparagraph:

''(C) No individual who is blind shall be regarded as having demonstrated an ability to engage in substantial gainful activity on the basis of monthly earnings in any taxable year that do not exceed an amount equal to—

''(i) in the case of earnings in the taxable year beginning after December 31, 2007, and before January 1, 2009, $1,800 per month;

''(ii) in the case of earnings in the taxable year beginning after December 31, 2008, and before January 1, 2010, $2,200 per month;

''(iii) in the case of earnings in the taxable year beginning after December 31, 2009, and before January 1, 2011, $2,500 per month;

''(iv) in the case of earnings in the taxable year beginning after December 31, 2010, and before January 1, 2012, $2,850 per month; and

''(v) in the case of earnings in a taxable year beginning after December 31, 2011, the exempt amount applicable under section 203(f)(8) to an individual who has attained retirement age (as defined in section 216(l)) before the close of the taxable year involved.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2007.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 426—CONGRATULATING THE STANFORD UNIVERSITY WOMEN'S CROSS COUNTRY TEAM ON WINNING THE 2007 NATIONAL COLLEGIATE ATHLETIC ASSOCIATION DIVISION I CHAMPIONSHIP

Mrs. FEINSTEIN (for herself and Mrs. BOXER) submitted the following resolution; which was considered and agreed to:

S. RES. 426

Whereas the Stanford University Cardinal won the 2007 National Collegiate Athletic Association (NCAA) Women's Cross Country Championship on November 19, 2007, in Terre Haute, Indiana;

Whereas the Cardinal won every postseason race and maintained a top ranking throughout the 2007 season;

Whereas in 2007 the Cardinal won a Division I women's cross country title for the 3rd year in a row and the 5th time in school history;

Whereas Arianna Lambie, Lauren Centrowitz, and Katie Harrington were honored as All-Americans for their exceptional contributions during the 2007 season; and

Whereas the 2007 Stanford women's cross country team members are players Arianna Lambie, Lauren Centrowitz, Katie Harrington, Alexandra Gits, Teresa McWalters, Lindsay Allen, Kate Niehaus, Alicia Follmar, Maddie Omeara, and Lindsay Flacks, and coaches Peter Tegen and David Vidal: Now, therefore, be it

Resolved, That the Senate congratulates the Stanford University women's cross country team for winning the 2007 National Collegiate Athletic Association Division I Championship.

SENATE RESOLUTION 427—CONGRATULATING THE UNIVERSITY OF CALIFORNIA AT BERKELEY MEN'S WATER POLO TEAM FOR WINNING THE 2007 NATIONAL COLLEGIATE ATHLETIC ASSOCIATION DIVISION I CHAMPIONSHIP

Mrs. FEINSTEIN (for herself and Mrs. BOXER) submitted the following resolution; which was considered and agreed to:

S. RES. 427

Whereas the University of California at Berkeley (California) Golden Bears won the 2007 National Collegiate Athletic Association (NCAA) Men's Water Polo Championship, 8-6, over the University of Southern California Trojans on December 2, 2007, at the Avery Aquatics Center at Stanford University;

Whereas the California Golden Bears had a 28-4 overall record during the 2007 season;

Whereas in 2007 the California Golden Bears won a Division I men's water polo title for the 2nd year in a row and the 13th time in school history;

Whereas Michael Sharf was named the 2007 NCAA Tournament Most Valuable Player, Zac Monsees, and Jeff Tyrrell were named to the NCAA Tournament 1st team, and Spencer Warden was named to the NCAA Tournament 2nd team; and

Whereas Michael Sharf, Zac Monsees, and Mark Sheredy were named as first-team All-Americans, Adam Haley was named a second-team All-American, and Jeff Tyrrell and Spencer Warden were selected as third-team All-Americans for their exceptional contributions during the 2007 season: Now, therefore, be it

Resolved, That the Senate congratulates the University of California at Berkeley men's water polo team for winning the 2007 National Collegiate Athletic Association Division I Championship.

SENATE RESOLUTION 428—CONGRATULATING THE UNIVERSITY OF SOUTHERN CALIFORNIA WOMEN'S SOCCER TEAM ON WINNING THE 2007 NATIONAL COLLEGIATE ATHLETIC ASSOCIATION DIVISION I CHAMPIONSHIP

Mrs. FEINSTEIN (for herself and Mrs. BOXER) submitted the following resolution; which was considered and agreed to:

S. RES. 428

Whereas the University of Southern California (USC) Trojans won the 2007 National Collegiate Athletic Association (NCAA) Women's Soccer Championship by a 2-0 victory over the Florida State University Seminoles on December 9, 2007, at the Aggie Soccer Complex in College Station, Texas;

Whereas the USC Trojans, in the 2007 season, had a 20-3-2 overall record, with 13 goals allowed, 15 shutouts, and a perfect 6-0 mark in the NCAA Women's Soccer Tournament, including 5 shutouts;

Whereas the USC Trojans won a Division I women's soccer title for the first time in school history in 2007;

Whereas Marihelen Tomer and Janessa Currier each scored a goal in the championship game;

Whereas Amy Rodriguez was named the tournament's Most Outstanding Offensive Player, Kristin Olsen was named the tournament's Most Outstanding Defensive Player, and Marihelen Tomer, Kasey Johnson, and Janessa Currier were named to the All-Tournament Team;

Whereas Ashley Nick and Kristin Olsen earned All-American Honors for their exceptional contributions during the 2007 season; and

Whereas the 2007 USC women's soccer team members are players Kristin Olsen, Brittany Massro, Nini Loucks, Alyssa Dávila, Laura McKee, Kat Stolpa, Lauren Brown, Shannon Lacy, Ashli Sandoval, Jamie Petrossi, Stacey Strong, Karter Haug, Amy Rodriguez, Kasey Johnson, Jacquelyn Johnston, Janessa Currier, Ashley Nick, Marihelen Tomer, Meagan Holmes, Megan Ohai, Kelley Finch, Briana Ovbude, Amy Massey, Kate Gong, and Monique Gaxiola, and coaches Ali Khosroshahin, Harold Warren, Laura Janke, Alicia Lloyd, and Rosa Anna Tantillo: Now, therefore, be it

Resolved, That the Senate congratulates the University of Southern California women's soccer team for winning the 2007 National Collegiate Athletic Association Division I Championship.

SENATE RESOLUTION 429—HONORING THE BRAVE MEN AND WOMEN OF THE UNITED STATES COAST GUARD WHOSE TIRELESS WORK, DEDICATION, AND COMMITMENT TO PROTECTING THE UNITED STATES HAVE LED TO THE CONFISCATION OF OVER 350,000 POUNDS OF COCAINE AT SEA DURING 2007

Mrs. DOLE (for herself, Mr. LIEBERMAN, Mr. BURR, Mr. KENNEDY, Ms. SNOWE, and Ms. CANTWELL) submitted the following resolution; which was referred to the Committee on Commerce, Science, and Transportation:

S. RES. 429

Whereas the estimated import value of the 350,000 pounds of cocaine confiscated by the United States Coast Guard in 2007 is more

than $4,700,000,000, or nearly ½ of the Coast Guard's annual budget;

Whereas the Coast Guard's at-sea drug interdictions are making a difference in the lives of United States citizens, as evidenced by the reduced supply of cocaine in more than 35 major cities throughout the United States;

Whereas keeping illegal drugs from reaching our shores, where they undermine American values and threaten families, schools, and communities, continues to be an important national priority;

Whereas, through robust interagency teamwork, collaboration with international partners, and ever more effective tools and tactics, the Coast Guard has removed more than 2,000,000 pounds of cocaine during the past 10 years and will continue to tighten the web of detection and interdiction at sea; and

Whereas the men and women of the Coast Guard who, while away from family and hundreds of miles from our shores, execute this dangerous mission, as well as other vital maritime safety, security, and environmental protection missions, with quiet dedication and without need of public recognition, continue to display selfless service in protecting the Nation and the American people: Now, therefore, be it

Resolved, That the Senate—

(1) honors the United States Coast Guard, with its proud 217-year legacy of maritime law enforcement and border protection, along with the brave men and women whose efforts clearly demonstrate the honor, respect, and devotion to duty that ensure the parents of the United States can sleep soundly knowing the Coast Guard is on patrol; and

(2) recognizes the tireless work, dedication, and commitment that have allowed the Coast Guard to confiscate over 350,000 pounds of cocaine at sea in 2007.

SENATE RESOLUTION 430—DESIGNATING JANUARY 2008 AS ''NATIONAL MENTORING MONTH''

Mr. KENNEDY (for himself, Mr. MCCAIN, Mr. AKAKA, Mr. BAYH, Mr. BURR, Ms. CANTWELL, Mr. CARPER, Mr. CASEY, Mrs. CLINTON, Mr. COLEMAN, Ms. COLLINS, Mr. DODD, Mr. DURBIN, Mr. FEINGOLD, Mr. GRASSLEY, Mr. ISAKSON, Mr. KERRY, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mrs. LINCOLN, Mr. MENENDEZ, Ms. MURKOWSKI, Mr. OBAMA, and Mr. SPECTER) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 430

Whereas youth mentoring establishes a structured and trusting relationship that brings young people together with caring individuals who offer guidance, support, and encouragement;

Whereas a growing body of mentoring research provides strong evidence of success in reducing delinquency, substance use and abuse, and academic failure;

Whereas research also shows that formal mentoring, aimed at developing the competence and character of the young person, promotes positive outcomes such as improved academic achievement, self-esteem, social skills, and career development;

Whereas mentoring offers a supportive environment in which young people can grow, expand their vision, and achieve a future that they never thought possible;

Whereas more than 15,000,000 young people in this Nation still need mentors, falling into a ''mentoring gap'';

Whereas more than 4,300 mentoring programs in communities of all sizes across the United States focus on building strong, effective relationships between mentors and mentees;

Whereas public-private mentoring partnerships bring State and local leaders together to support mentoring programs by preventing duplication of efforts, offering training in industry best practices, and helping them make the most of limited resources to benefit the Nation's youth;

Whereas coordinated national, State, regional, and local efforts continue to need Federal support to allow more youth to be connected with the power of mentoring;

Whereas several Federal agencies have come together to coordinate approaches to mentoring within the Federal Government through the Federal Mentoring Council and National Mentoring Working Group under the Corporation for National and Community Service;

Whereas the designation of January 2008 as National Mentoring Month will help call attention to the critical role mentors play in helping young people realize their potential;

Whereas the month-long celebration of mentoring will encourage more organizations across the United States, including schools, businesses, nonprofit organizations, faith institutions, foundations, and individuals to become engaged in mentoring;

Whereas National Mentoring Month will, most significantly, build awareness of mentoring and encourage more people to become mentors and help close the Nation's mentoring gap; and

Whereas the President has issued a proclamation declaring January 2008 to be National Mentoring Month and calling on the people of the United States to recognize the importance of mentoring, to look for opportunities to serve as mentors in their communities, and to observe the month with appropriate activities and programs: Now, therefore, be it

Resolved, That the Senate—

(1) designates the month of January 2008 as ''National Mentoring Month'';

(2) recognizes with gratitude the contributions of the millions of caring volunteers who already serve as mentors and encourages more individuals to volunteer as mentors; and

(3) encourages the people of the United States to observe the month with appropriate ceremonies and activities that promote the awareness of, and volunteer involvement with, youth mentoring.

Mr. KENNEDY. Mr. President, I am pleased to join many of my colleagues in submitting a resolution recognizing January 2008 as National Mentoring Month.

We all know the extraordinary help and support that a good mentor can give to a child. High-quality mentoring programs can make all the difference to students in need. They can reduce negative outcomes, and help keep children on track. They can reduce drug and substance abuse and delinquency. They can enable students to stay in school instead of dropping out.

By promoting such positive outcomes, mentors enable students to obtain the skills they need to succeed in school and in life. They improve academic achievement, and they also improve self-esteem and social and communications skills.

National Mentoring Month is an opportunity to recognize and commend the many mentors across the country who are doing their part. It is also an opportunity to raise awareness about the real value of mentoring, and encourage more adults to become mentors. Experts estimate that nearly 18 million young students could benefit from being matched with a mentor, but only about 3 million of these youth are in such a relationship today. Fifteen million youth need a mentor—but they do not have one.

Mentoring a young person doesn't just pay off for the youth; it can be beneficial for the mentor as well. For the past 12 years, I have participated in the Everybody Wins Program at Brent Elementary School near the Capitol. Once a week during the school year, I spend an hour with an elementary school student. We read together, share stories, and learn from each other. This year, my first reading partner is finishing high school, and next year she will be starting college. She has stayed in touch, and it has been amazing to see her grow.

Robert Kennedy often spoke of the ripples of hope that people send forth each time they act to help others. Mentors are a proven example of the power of each citizen to create such ripples, and we should do what we can to recognize and support them. I urge the Senate to approve this resolution.

SENATE RESOLUTION 431—CALLING FOR A PEACEFUL RESOLUTION TO THE CURRENT ELECTORAL CRISIS IN KENYA

Mr. FEINGOLD (for himself, Mr. SUNUNU, Mr. CARDIN, Mr. KERRY, Mr. BROWN, Mr. DODD, Mr. KENNEDY, Mr. MENENDEZ, Mr. DURBIN, Mrs. BOXER, Mr. BIDEN, Mrs. CLINTON, Mr. OBAMA, Mr. HARKIN, Mr. COLEMAN, Mr. HAGEL, Mr. BROWNBACK, and Ms. SNOWE) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 431

Whereas on December 27, 2007, Kenyan citizens went peacefully to the polls to elect a new parliament and a new President and signaled their commitment to democracy by turning out in large numbers, and in some instances waiting in long lines to vote;

Whereas election observers reported serious irregularities and a lack of transparency that, combined with the implausibility of the margin of victory, and the swearing in of the Party of National Unity presidential candidate Mwai Kibaki with undue haste, all serve to undermine the credibility of the presidential election results;

Whereas the Government of Kenya imposed a ban on live media broadcasts that day, and shortly after the election results were announced, in contravention of Kenyan law, the Government also announced a blanket ban on public assembly and gave police the authority to use lethal force;

Whereas subsequent to declaring Mr. Kibaki the winner, the head of the Election Commission of Kenya (ECK) stated that he did not know who won the presidential election;

Whereas in the aftermath of the election announcement, significant violence began and continues to flare;

Whereas on January 1, 2008, 4 commissioners on the ECK issued a statement which

called for a judicial review and tallying of the vote;

Whereas the head of the European Union Election Observation Mission stated that ''[l]ack of transparency, as well as a number of verified irregularities... cast doubt on the accuracy of the results of the presidential election as announced by the ECK'' and called for an international audit of the results;

Whereas the Attorney General of Kenya has called for an independent investigation of the tallying of votes and for the votes to be retallied;

Whereas observers from the East African Community have called for an investigation into irregularities during the tallying process and for those responsible for such irregularities to be held accountable;

Whereas some estimates indicate that at least 700 people have died and as many as 250,000 have been displaced as a result of this violence, which continues;

Whereas the economic cost to Kenya of the violence and civil unrest in the wake of the disputed polls is estimated at $1,000,000,000;

Whereas the Assistant Secretary of State for African Affairs traveled to Nairobi in an attempt to mediate between the 2 leading presidential candidates and has stated that ''serious flaws in the vote tallying process damaged the credibility of the process'' and that the United States should not ''conduct business as usual'' in Kenya; and

Whereas Kenya has been a valuable strategic, political, diplomatic, and economic partner to those in the subregion, region, and to the United States and has been 1 of the major recipients of United States foreign assistance in sub-Saharan Africa for decades: Now, therefore, be it

Resolved, That the Senate—

(1) commends the Kenyan people for their commitment to democracy and respect for the democratic process, as evidenced by the high voter turnout and peaceful voting on election day;

(2) strongly condemns the violence in Kenya;

(3) urges all politicians and political parties to immediately desist from the reactivation, support, and use of militia organizations that are ethnic-based or otherwise constituted;

(4) calls on the 2 leading presidential candidates to—

(A) engage in an internationally brokered dialogue, which results in a new political dispensation that is supported by Kenyan civil society; and

(B) respect the will of the Kenyan people;

(5) simultaneously—

(A) supports a call for electoral justice in Kenya, including a thorough and credible independent audit of election results with the possibility, depending on what is discovered, of a recount or retallying of votes, or a rerun of the presidential elections within a specified time period; and

(B) encourages any political settlement to take into account these recommendations;

(6) calls on Kenyan security forces to refrain from use of excessive force and respect the human rights of Kenyan citizens;

(7) calls for those who are found guilty of committing human rights violations to be held accountable for their actions;

(8) calls for an immediate end to the restrictions on the media, and on the rights of peaceful assembly and association;

(9) condemns threats to civil society leaders and human rights activists who are working towards a peaceful, just, and equitable political solution to the current electoral crisis;

(10) holds all political actors in Kenya responsible for the safety and security of civil society leaders and human rights advocates;

(11) calls on the international community, United Nations aid organizations, and all neighboring countries to provide assistance to Kenyan refugees who have fled in search of greater security;

(12) encourages others in the international community to work together and use all diplomatic means at their disposal to persuade relevant political actors to commit to a peaceful resolution to the current crisis; and

(13) urges the President of the United States to—

(A) support diplomatic efforts to facilitate a dialogue between leaders of the Party of National Unity, the Orange Democratic Movement, and other relevant actors;

(B) consider the imposition of personal sanctions, including a travel ban and asset freeze on leaders in the Party of National Unity, the Orange Democratic Movement, and other relevant actors who refuse to engage in meaningful dialogue to end the current crisis; and

(C) conduct a review of current United States aid to Kenya for the purpose of restricting all nonessential assistance to Kenya, unless all parties are able to establish a peaceful, political resolution to the current crisis, which is credible with the Kenyan people.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3919. Mrs. FEINSTEIN (for herself, Mr. NELSON, of Florida, and Mr. CARDIN) 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 3920. Mr. WHITEHOUSE (for himself, Mr. ROCKEFELLER, Mr. LEAHY, and Mr. SCHUMER) submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3921. Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3922. Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3923. Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3924. Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3925. Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3926. Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3927. Mr. SPECTER (for himself and Mr. WHITEHOUSE) submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3928. Mr. KYL submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3929. Mr. LEAHY (for himself, Mr. KENNEDY, Mr. MENENDEZ, and Ms. MIKULSKI) submitted an amendment intended to be proposed by him to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3930. Mr. CARDIN (for himself and Ms. MIKULSKI) submitted an amendment intended to be proposed by him to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3931. Mr. KENNEDY (for himself, Mr. KERRY, and Mr. MENENDEZ) submitted an amendment intended to be proposed by him to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3932. Mr. WHITEHOUSE submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3933. Mr. WYDEN submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3934. Mr. ROCKEFELLER submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3935. Mr. ROCKEFELLER submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3936. Mr. ROCKEFELLER submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3937. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3938. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3939. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3940. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3941. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3942. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3943. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3944. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3945. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3946. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for

himself and Mr. BOND) to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3947. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3948. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3949. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, supra; which was ordered to lie on the table.

SA 3950. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3919. Mrs. FEINSTEIN (for herself, Mr. NELSON of Florida, and Mr. CARDIN) 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 72, strike line 13 and all that follows through page 73, line 25, 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)).

(7) FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW.—The term ''Foreign Intelligence Surveillance Court of Review'' means the court of review established under section 103(b) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(b)).

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 (3), 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) SUBMISSION OF CERTIFICATION.—If the Attorney General submits a certification under paragraph (1), the court to which that certification is submitted shall—

(A) immediately transfer the matter to the Foreign Intelligence Surveillance Court for a determination regarding the questions described in paragraph (3)(A); and

(B) stay further proceedings in the relevant litigation, pending the determination of the Foreign Intelligence Surveillance Court.

(3) 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) of title 18, United States Code, and the assistance alleged to have been provided was provided in accordance with the terms of that written request or directive;

(ii) subject to subparagraph (C), the assistance alleged to have been provided was undertaken based on the good faith reliance of the electronic communication service provider on the written request or directive under paragraph (1)(A)(ii), such that the electronic communication service provider had an objectively reasonable belief under the circumstances that compliance with the written request or directive was lawful; or

(iii) the electronic communication service provider did not provide the alleged assistance.

(B) PROCEDURES.—

(i) IN GENERAL.—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 pursuant to section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803).

(ii) APPEAL TO FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW.—A party to a proceeding described in clause (i) may appeal a determination under subparagraph (A) to the Foreign Intelligence Surveillance Court of Review, which shall have jurisdiction to review such determination.

(iii) CERTIORARI TO THE SUPREME COURT.—A party to an appeal under clause (ii) may file a petition for a writ of certiorari for review of a decision of the Foreign Intelligence Surveillance Court of Review issued under that clause. 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.

(iv) STATE SECRETS.—The state secrets privilege shall not apply in any proceeding under this paragraph.

(C) SCOPE OF GOOD FAITH LIMITATION.—The limitation on covered civil actions based on good faith reliance under subparagraph (A)(ii) shall only apply in a civil action relating to alleged assistance provided on or before January 17, 2007.

SA 3920. Mr. WHITEHOUSE (for himself, Mr. ROCKEFELLER, Mr. LEAHY, and Mr. SCHUMER) submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) 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 19, between lines 20 and 21, insert the following:

''(7) COMPLIANCE REVIEWS.—During the period that minimization procedures approved under paragraph (5)(A) are in effect, the Court may review and assess compliance with such procedures and shall have access to the assessments and reviews required by subsections (k)(1), (k)(2), and (k)(3) with respect to compliance with such procedures. In conducting a review under this paragraph, the Court may, to the extent necessary, require the Government to provide additional information regarding the acquisition, retention, or dissemination of information concerning United States persons during the course of an acquisition authorized under subsection (a). The Court may fashion remedies it determines necessary to enforce compliance.

SA 3921. Mr. KYL 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:

At the appropriate place, insert the following:

SEC. ___. IMPROVEMENTS TO THE CLASSIFIED INFORMATION PROCEDURES ACT.

(a) INTERLOCUTORY APPEALS UNDER THE CLASSIFIED INFORMATION PROCEDURES ACT.—Section 7(a) of the Classified Information Procedures Act (18 U.S.C. App.) is amended by adding at the end ''The Government's right to appeal under this section applies without regard to whether the order appealed from was entered under this Act.''.

(b) EX PARTE AUTHORIZATIONS UNDER THE CLASSIFIED INFORMATION PROCEDURES ACT.—Section 4 of the Classified Information Procedures Act (18 U.S.C. App.) is amended—

(1) in the second sentence—

(A) by striking ''may'' and inserting ''shall''; and

(B) by striking ''written statement to be inspected'' and inserting ''statement to be made ex parte and to be considered''; and

(2) in the third sentence—

(A) by striking ''If the court enters an order granting relief following such an ex parte showing, the'' and inserting ''The''; and

(B) by inserting '', as well as any summary of the classified information the defendant seeks to obtain,'' after ''text of the statement of the United States''.

(c) APPLICATION OF CLASSIFIED INFORMATION PROCEDURES ACT TO NONDOCUMENTARY INFORMATION.—Section 4 of the Classified Information Procedures Act (18 U.S.C. App.) is amended—

(1) in the section heading, by inserting '', AND ACCESS TO,'' after ''OF'';

(2) by inserting ''(a) DISCOVERY OF CLASSIFIED INFORMATION FROM DOCUMENTS.—'' before the first sentence; and

(3) by adding at the end the following:

''(b) ACCESS TO OTHER CLASSIFIED INFORMATION.—

''(1) If the defendant seeks access through deposition under the Federal Rules of Criminal Procedure or otherwise to non-documentary information from a potential witness or other person which he knows or reasonably believes is classified, he shall notify the attorney for the United States and the district court in writing. Such notice shall specify with particularity the classified information sought by the defendant and the legal basis for such access. At a time set by the court,

the United States may oppose access to the classified information.

''(2) If, after consideration of any objection raised by the United States, including any objection asserted on the basis of privilege, the court determines that the defendant is legally entitled to have access to the information specified in the notice required by paragraph (1), the United States may request the substitution of a summary of the classified information or the substitution of a statement admitting relevant facts that the classified information would tend to prove.

''(3) The court shall permit the United States to make its objection to access or its request for such substitution in the form of a statement to be made ex parte and to be considered by the court alone. The entire text of the statement of the United States, as well as any summary of the classified information the defendant seeks to obtain, shall be sealed and preserved in the records of the court and made available to the appellate court in the event of an appeal.

''(4) The court shall grant the request of the United States to substitute a summary of the classified information or to substitute a statement admitting relevant facts that the classified information would tend to prove if it finds that the summary or statement will provide the defendant with substantially the same ability to make his defense as would disclosure of the specific classified information.

''(5) A defendant may not obtain access to classified information subject to this subsection except as provided in this subsection. Any proceeding, whether by deposition under the Federal Rules of Criminal Procedure or otherwise, in which a defendant seeks to obtain access to such classified information not previously authorized by a court for disclosure under this subsection must be discontinued or may proceed only as to lines of inquiry not involving such classified information.''.

SA 3922. Mr. KYL 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:

At the appropriate place, insert the following:

SEC. ___. INVESTIGATION OF TERRORIST CRIMES.

(a) NONDISCLOSURE OF FISA INVESTIGATIONS.—The following provisions of the Foreign Intelligence Surveillance Act of 1978 are each amended by inserting ''(other than in proceedings or other civil matters under the immigration laws, as that term is defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17)))'' after ''authority of the United States'':

(1) Subsections (c), (e), and (f) of section 106 (50 U.S.C. 1806).

(2) Subsections (d), (f), and (g) of section 305 (50 U.S.C. 1825).

(3) Subsections (c), (e), and (f) of section 405 (50 U.S.C. 1845).

(b) MULTIDISTRICT SEARCH WARRANTS IN TERRORISM INVESTIGATIONS.—Rule 41(b)(3) of the Federal Rules of Criminal Procedure is amended to read as follows:

''(3) a magistrate judge—in an investigation of—

''(A) a Federal crime of terrorism (as defined in section 2332b(g)(g) of title 18, United States Code); or

''(B) an offense under section 1001 or 1505 of title 18, United States Code, relating to information or purported information concerning a Federal crime of terrorism (as defined in section 2332b(g)(5) of title 18, United States Code)—having authority in any district in which activities related to the Federal crime of terrorism or offense may have occurred, may issue a warrant for a person or property within or outside that district.''.

(c) INCREASED PENALTIES FOR OBSTRUCTION OF JUSTICE IN TERRORISM CASES.—Sections 1001(a) and 1505 of title 18, United States Code, are amended by striking ''8 years'' and inserting ''10 years''.

SA 3923. Mr. KYL 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:

At the appropriate place, insert the following:

SEC. ___. DENIAL OF FEDERAL BENEFITS TO CONVICTED TERRORISTS.

(a) IN GENERAL.—Chapter 113B of title 18, United States Code, is amended by adding at the end the following:

''§ 2339E. Denial of Federal benefits to terrorists

''(a) IN GENERAL.—Any individual who is convicted of a Federal crime of terrorism (as defined in section 2332b(g)) shall, as provided by the court on motion of the Government, be ineligible for any or all Federal benefits for any term of years or for life.

''(b) FEDERAL BENEFIT DEFINED.—In this section, 'Federal benefit' has the meaning given that term in section 421(d) of the Controlled Substances Act (21 U.S.C. 862(d)).''.

(b) TABLE OF SECTIONS.—The table of sections for chapter 113B of title 18, United States Code, is amended by adding at the end the following:

''2339D. Receiving military-type training from a foreign terrorist organization.

''2339E. Denial of Federal benefits to terrorists.''.

SA 3924. Mr. KYL 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:

At the appropriate place, insert the following:

SEC. ____. TERRORIST MURDERS, KIDNAPPINGS, AND ASSAULTS.

(a) PENALTIES FOR TERRORIST MURDER AND MANSLAUGHTER.—Section 2332(a) of title 18, United States Code, is amended—

(1) in paragraph (1), by striking '', punished by death'' and all that follows and inserting ''and punished by death or imprisoned for life;''; and

(2) in paragraph (2), by striking ''ten years'' and inserting ''30 years''.

(b) ADDITION OF OFFENSE OF TERRORIST KIDNAPPING.—Section 2332 of title 18, United States Code, is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(2) by inserting after subsection (b) the following:

''(c) KIDNAPPING.—Whoever outside the United States unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away, or attempts or conspires to seize, confine, inveigle, decoy, kidnap, abduct or carry away, a national of the United States shall be fined under this title and imprisoned for any term of years or for life.''.

(c) ADDITION OF SEXUAL ASSAULT TO DEFINITION OF OFFENSE OF TERRORIST ASSAULT.—Section 2332(d) of title 18, United States Code, as redesignated by subsection (b) of this section, is amended—

(1) in paragraph (1), by inserting ''(as defined in section 1365, 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)'' after ''injury'';

(2) in paragraph (2), by inserting ''(as defined in section 1365, 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)'' after ''injury''; and

(3) in the matter following paragraph (2), by striking ''or imprisoned'' and all that follows and inserting ''and imprisoned for any term of years not less than 30 or for life.''.

SA 3925. Mr. KYL 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:

At the appropriate place, insert the following:

SEC. ___. PREVENTION AND DETERRENCE OF TERRORIST SUICIDE BOMBINGS.

(a) OFFENSE OF REWARDING OR FACILITATING INTERNATIONAL TERRORIST ACTS.—

(1) IN GENERAL.—Chapter 113B of title 18, United States Code, is amended by adding at the end the following:

''§ 2339E. Providing material support to international terrorism

''(a) DEFINITIONS.—In this section:

''(1) The term 'facility of interstate or foreign commerce' has the same meaning as in section 1958(b)(2).

''(2) The term 'international terrorism' has the same meaning as in section 2331.

''(3) The term 'material support or resources' has the same meaning as in section 2339A(b).

''(4) The term 'perpetrator of an act' includes any person who—

''(A) commits the act;

''(B) aids, abets, counsels, commands, induces, or procures its commission; or

''(C) attempts, plots, or conspires to commit the act.

''(5) The term 'serious bodily injury' has the same meaning as in section 1365.

''(b) PROHIBITION.—Whoever, in a circumstance described in subsection (c), provides, or attempts or conspires to provide, material support or resources to the perpetrator of an act of international terrorism, or to a family member or other person associated with such perpetrator, with the intent to facilitate, reward, or encourage that act or other acts of international terrorism, shall be fined under this title, imprisoned for any term of years or for life, or both, and, if death results, shall be imprisoned for any term of years not less than 10 or for life.

''(c) JURISDICTIONAL BASES.—A circumstance referred to in subsection (b) is that—

''(1) the offense occurs in or affects interstate or foreign commerce;

''(2) the offense involves the use of the mails or a facility of interstate or foreign commerce;

''(3) an offender intends to facilitate, reward, or encourage an act of international terrorism that affects interstate or foreign commerce or would have affected interstate

or foreign commerce had it been consummated;

''(4) an offender intends to facilitate, reward, or encourage an act of international terrorism that violates the criminal laws of the United States;

''(5) an offender intends to facilitate, reward, or encourage an act of international terrorism that is designed to influence the policy or affect the conduct of the United States Government;

''(6) an offender intends to facilitate, reward, or encourage an act of international terrorism that occurs in part within the United States and is designed to influence the policy or affect the conduct of a foreign government;

''(7) an offender intends to facilitate, reward, or encourage an act of international terrorism that causes or is designed to cause death or serious bodily injury to a national of the United States while that national is outside the United States, or substantial damage to the property of a legal entity organized under the laws of the United States (including any of its States, districts, commonwealths, territories, or possessions) while that property is outside of the United States;

''(8) the offense occurs in whole or in part within the United States, and an offender intends to facilitate, reward or encourage an act of international terrorism that is designed to influence the policy or affect the conduct of a foreign government; or

''(9) the offense occurs in whole or in part outside of the United States, and an offender is a national of the United States, a stateless person whose habitual residence is in the United States, or a legal entity organized under the laws of the United States (including any of its States, districts, commonwealths, territories, or possessions).''.

(2) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) TABLE OF SECTIONS.—The table of sections for chapter 113B of title 18, United States Code, is amended by adding at the end the following:

''2339D. Receiving military-type training from a foreign terrorist organization.

''2339E. Providing material support to international terrorism.''.

(B) OTHER AMENDMENT.—Section 2332b(g)(5)(B)(i) of title 18, United States Code, is amended by inserting ''2339E (relating to providing material support to international terrorism),'' before ''or 2340A (relating to torture)''.

(b) INCREASED PENALTIES FOR PROVIDING MATERIAL SUPPORT TO TERRORISTS.—

(1) PROVIDING MATERIAL SUPPORT TO DESIGNATED FOREIGN TERRORIST ORGANIZATIONS.—Section 2339B(a) of title 18, United States Code, is amended by striking ''15 years'' and inserting ''30 years''.

(2) PROVIDING MATERIAL SUPPORT OR RESOURCES IN AID OF A TERRORIST CRIME.—Section 2339A(a) of title 18, United States Code, is amended by striking ''imprisoned not more than 15 years'' and all that follows through ''life.'' and inserting ''imprisoned for any term of years or for life, or both, and, if the death of any person results, shall be imprisoned for any term of years not less than 10 or for life.''.

(3) RECEIVING MILITARY-TYPE TRAINING FROM A FOREIGN TERRORIST ORGANIZATION.—Section 2339D(a) of title 18, United States Code, is amended by striking ''ten years'' and inserting ''25 years''.

(4) ADDITION OF ATTEMPTS AND CONSPIRACIES TO AN OFFENSE RELATING TO MILITARY TRAINING.—Section 2339D(a) of title 18, United States Code, is amended by inserting '', or attempts or conspires to receive,'' after ''receives''.

SA 3926. Mr. KYL 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:

At the appropriate place, insert the following:

SEC. ___. TERRORIST HOAXES AGAINST FAMILIES OF UNITED STATES SERVICEMEN.

(a) HOAX STATUTE.—Section 1038 of title 18, United States Code, is amended—

(1) in subsections (a)(1) and (b), by inserting ''or any other offense listed under section 2332b(g)(5)(B) of this title'' after ''title 49,''; and

(2) in subsection (a)(2)—

(A) in subparagraph (A), by striking '', imprisoned not more than 5 years, or both'' and inserting ''and imprisoned for not less than 2 years nor more than 10 years'';

(B) in subparagraph (B), by striking '', imprisoned not more than 20 years, or both'' and inserting ''and imprisoned for not less than 5 years nor more than 25 years''; and

(C) in subparagraph (C), by striking '', imprisoned for any term of years or for life, or both'' and inserting ''and imprisoned for any term of years not less than 10 or for life''.

(b) ATTACKS ON UNITED STATES SERVICEMEN.—

(1) IN GENERAL.—Chapter 67 of title 18, United States Code, is amended by adding at the end the following:

''§ 1389. Prohibition on attacks on United States servicemen on account of service

''(a) IN GENERAL.—Whoever knowingly assaults or batters a United States serviceman or an immediate family member of a United States serviceman, or who knowingly destroys or injures the property of such serviceman or immediate family member, on account of the military service of that serviceman or status of that individual as a United States serviceman, or who attempts or conspires to do so, shall—

''(1) in the case of a simple assault, or destruction or injury to property in which the damage or attempted damage to such property is not more than $500, be fined under this title in an amount not less than $500 nor more than $10,000 and imprisoned not more than 2 years;

''(2) in the case of destruction or injury to property in which the damage or attempted damage to such property is more than $500, be fined under this title in an amount not less than $1000 nor more than $100,000 and imprisoned not less than 90 days nor more than 10 years; and

''(3) in the case of a battery, or an assault resulting in bodily injury, be fined under this title in an amount not less than $2500 and imprisoned not less than 2 years nor more than 30 years.

''(b) EXCEPTION.—This section shall not apply to conduct by a person who is subject to the Uniform Code of Military Justice.

''(c) DEFINITIONS.—In this section—

''(1) the term 'Armed Forces' has the meaning given that term in section 1388;

''(2) the term 'immediate family member' has the meaning given that term in section 115; and

''(3) the term 'United States serviceman'—

''(A) means a member of the Armed Forces; and

''(B) includes a former member of the Armed Forces during the 5-year period beginning on the date of the discharge from the Armed Forces of that member of the Armed Forces.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 67 of title 18, United States Code, is amended by adding at the end the following:

''1389. Prohibition on attacks on United States servicemen on account of service.''.

(c) THREATENING COMMUNICATIONS.—

(1) MAILED WITHIN THE UNITED STATES.—Section 876 of title 18, United States Code, is amended by adding at the end the following:

''(e) For purposes of this section, the term 'addressed to any other person' includes an individual (other than the sender), a corporation or other legal person, and a government or agency or component thereof.''.

(2) MAILED TO A FOREIGN COUNTRY.—Section 877 of title 18, United States Code, is amended by adding at the end the following:

''For purposes of this section, the term 'addressed to any person' includes an individual, a corporation or other legal person, and a government or agency or component thereof.''.

SA 3927. Mr. SPECTER (for himself and Mr. WHITEHOUSE) submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) 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 72, strike line 13 and all that follows through page 75, line 5, 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. SUBSTITUTION OF THE UNITED STATES IN CERTAIN ACTIONS.

(a) IN GENERAL.—

(1) CERTIFICATION.—Notwithstanding any other provision of law, a Federal or State court shall substitute the United States for an electronic communication service provider with respect to any claim in a covered civil action as provided in this subsection, if the Attorney General certifies to that court that—

(A) with respect to that claim, the assistance alleged to have been provided by the electronic communication service provider was—

(i) provided 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) SUBSTITUTION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), and subject to subparagraph (C), upon receiving a certification under paragraph (1), a Federal or State court shall—

(i) substitute the United States for the electronic communication service provider

as the defendant as to all claims designated by the Attorney General in that certification, consistent with the procedures under rule 25(c) of the Federal Rules of Civil Procedure, as if the United States were a party to whom the interest of the electronic communication service provider in the litigation had been transferred; and

(ii) as to that electronic communication service provider—

(I) dismiss all claims designated by the Attorney General in that certification; and

(II) enter a final judgment relating to those claims.

(B) CONTINUATION OF CERTAIN CLAIMS.—If a certification by the Attorney General under paragraph (1) states that not all of the alleged assistance was provided under a written request or directive described in paragraph (1)(A)(ii), the electronic communication service provider shall remain as a defendant.

(C) DETERMINATION.—

(i) IN GENERAL.—Substitution under subparagraph (A) shall proceed only after a determination by the Foreign Intelligence Surveillance Court 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 by the electronic communication service provider acting in good faith and pursuant to an objectively reasonable belief 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.

(ii) CERTIFICATION.—If the Attorney General submits a certification under paragraph (1), the court to which that certification is submitted shall—

(I) immediately certify the questions described in clause (i) to the Foreign Intelligence Surveillance Court; and

(II) stay further proceedings in the relevant litigation, pending the determination of the Foreign Intelligence Surveillance Court.

(iii) PARTICIPATION OF PARTIES.—In reviewing a certification and making a determination under clause (i), the Foreign Intelligence Surveillance Court shall permit any plaintiff and any defendant in the applicable covered civil action to appear before the Foreign Intelligence Surveillance Court pursuant to section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803).

(iv) DECLARATIONS.—If the Attorney General files a declaration under section 1746 of title 28, United States Code, that disclosure of a determination made pursuant to clause (i) would harm the national security of the United States, the Foreign Intelligence Surveillance Court shall limit any public disclosure concerning such determination, including any public order following such an ex parte review, to a statement that the conditions of clause (i) have or have not been met, without disclosing the basis for the determination.

(3) PROCEDURES.—

(A) TORT CLAIMS.—Upon a substitution under paragraph (2), for any tort claim—

(i) the claim shall be deemed to have been filed under section 1346(b) of title 28, United States Code, except that sections 2401(b), 2675, and 2680(a) of title 28, United States Code, shall not apply; and

(ii) the claim shall be deemed timely filed against the United States if it was timely filed against the electronic communication service provider.

(B) CONSTITUTIONAL AND STATUTORY CLAIMS.—Upon a substitution under paragraph (2), for any claim under the Constitution of the United States or any Federal statute—

(i) the claim shall be deemed to have been filed against the United States under section 1331 of title 28, United States Code;

(ii) with respect to any claim under a Federal statute that does not provide a cause of action against the United States, the plaintiff shall be permitted to amend such claim to substitute, as appropriate, a cause of action under—

(I) section 704 of title 5, United States Code (commonly known as the Administrative Procedure Act);

(II) section 2712 of title 18, United States Code; or

(III) section 110 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1810);

(iii) the statutes of limitation applicable to the causes of action identified in clause (ii) shall not apply to any amended claim under that clause, and any such cause of action shall be deemed timely filed if any Federal statutory cause of action against the electronic communication service provider was timely filed; and

(iv) for any amended claim under clause (ii) the United States shall be deemed a proper defendant under any statutes described in that clause, and any plaintiff that had standing to proceed against the original defendant shall be deemed an aggrieved party for purposes of proceeding under section 2712 of title 18, United States Code, or section 110 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1810).

(C) DISCOVERY.—

(i) IN GENERAL.—In a covered civil action in which the United States is substituted as party-defendant under paragraph (2), any plaintiff may serve third-party discovery requests to any electronic communications service provider as to which all claims are dismissed.

(ii) BINDING THE GOVERNMENT.—If a plaintiff in a covered civil action serves deposition notices under rule 30(b)(6) of the Federal Rules of Civil Procedure or requests under rule 36 of the Federal Rules of Civil Procedure for admission upon an electronic communications service provider as to which all claims were dismissed, the electronic communications service provider shall be deemed a party-defendant for purposes rule 30(b)(6) or rule 36 and its answers and admissions shall be deemed binding upon the Government.

(b) CERTIFICATIONS.—

(1) IN GENERAL.—For purposes of substitution proceedings under this section—

(A) a certification under subsection (a) may be provided and reviewed in camera, ex parte, and under seal; and

(B) for any certification provided and reviewed as described in subparagraph (A), the court shall not disclose or cause the disclosure of its contents.

(2) NONDELEGATION.—The authority and duties of the Attorney General under this section shall be performed by the Attorney General or a designee in a position not lower than the Deputy Attorney General.

(c) SOVEREIGN IMMUNITY.—This section, including any Federal statute cited in this section that operates as a waiver of sovereign immunity, constitute the sole waiver of sovereign immunity with respect to any covered civil action.

(d) CIVIL ACTIONS IN STATE COURT.—For purposes of section 1441 of title 28, United States Code, any covered civil action that is brought in a State court or administrative or regulatory bodies shall be deemed to arise under the Constitution or laws of the United States and shall be removable under that section.

(e) RULE OF CONSTRUCTION.—Except as expressly provided in this section, nothing in this section may be construed to limit any immunity, privilege, or defense under any other provision of law, including any privilege, immunity, or defense that would otherwise have been available to the United States absent its substitution as party-defendant or had the United States been the named defendant.

(f) EFFECTIVE DATE AND APPLICATION.—This section shall apply to any covered civil action pending on or filed after the date of enactment of this Act.

SA 3928. Mr. KYL submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) 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 88, after line 23, insert the following:

SEC. ___. PREVENTION AND DETERRENCE OF TERRORIST SUICIDE BOMBINGS.

(a) IN GENERAL.—

(1) OFFENSE OF REWARDING OR FACILITATING INTERNATIONAL TERRORIST ACTS.—

(A) IN GENERAL.—Chapter 113B of title 18, United States Code, is amended by adding at the end the following:

"§ 2339E. Providing material support to international terrorism

''(a) DEFINITIONS.—In this section:

''(1) The term 'facility of interstate or foreign commerce' has the same meaning as in section 1958(b)(2).

''(2) The term 'international terrorism' has the same meaning as in section 2331.

''(3) The term 'material support or resources' has the same meaning as in section 2339A(b).

''(4) The term 'perpetrator of an act' includes any person who—

''(A) commits the act;

''(B) aids, abets, counsels, commands, induces, or procures its commission; or

''(C) attempts, plots, or conspires to commit the act.

''(5) The term 'serious bodily injury' has the same meaning as in section 1365.

''(b) PROHIBITION.—Whoever, in a circumstance described in subsection (c), provides, or attempts or conspires to provide, material support or resources to the perpetrator of an act of international terrorism, or to a family member or other person associated with such perpetrator, with the intent to facilitate, reward, or encourage that act or other acts of international terrorism, shall be fined under this title, imprisoned for any term of years or for life, or both, and, if death results, shall be imprisoned for any term of years not less than 10 or for life.

''(c) JURISDICTIONAL BASES.—A circumstance referred to in subsection (b) is that—

''(1) the offense occurs in or affects interstate or foreign commerce;

''(2) the offense involves the use of the mails or a facility of interstate or foreign commerce;

''(3) an offender intends to facilitate, reward, or encourage an act of international terrorism that affects interstate or foreign commerce or would have affected interstate or foreign commerce had it been consummated;

''(4) an offender intends to facilitate, reward, or encourage an act of international

terrorism that violates the criminal laws of the United States;

''(5) an offender intends to facilitate, reward, or encourage an act of international terrorism that is designed to influence the policy or affect the conduct of the United States Government;

''(6) an offender intends to facilitate, reward, or encourage an act of international terrorism that occurs in part within the United States and is designed to influence the policy or affect the conduct of a foreign government;

''(7) an offender intends to facilitate, reward, or encourage an act of international terrorism that causes or is designed to cause death or serious bodily injury to a national of the United States while that national is outside the United States, or substantial damage to the property of a legal entity organized under the laws of the United States (including any of its States, districts, commonwealths, territories, or possessions) while that property is outside of the United States;

''(8) the offense occurs in whole or in part within the United States, and an offender intends to facilitate, reward or encourage an act of international terrorism that is designed to influence the policy or affect the conduct of a foreign government; or

''(9) the offense occurs in whole or in part outside of the United States, and an offender is a national of the United States, a stateless person whose habitual residence is in the United States, or a legal entity organized under the laws of the United States (including any of its States, districts, commonwealths, territories, or possessions).''.

(B) TECHNICAL AND CONFORMING AMENDMENTS.—

(i) TABLE OF SECTIONS.—The table of sections for chapter 113B of title 18, United States Code, is amended by adding at the end the following:

''2339D. Receiving military-type training from a foreign terrorist organization.

''2339E. Providing material support to international terrorism.''.

(ii) OTHER AMENDMENT.—Section 2332b(g)(5)(B)(i) of title 18, United States Code, is amended by inserting ''2339E (relating to providing material support to international terrorism),'' before ''or 2340A (relating to torture)''.

(2) INCREASED PENALTIES FOR PROVIDING MATERIAL SUPPORT TO TERRORISTS.—

(A) PROVIDING MATERIAL SUPPORT TO DESIGNATED FOREIGN TERRORIST ORGANIZATIONS.—Section 2339B(a) of title 18, United States Code, is amended by striking ''15 years'' and inserting ''30 years''.

(B) PROVIDING MATERIAL SUPPORT OR RESOURCES IN AID OF A TERRORIST CRIME.—Section 2339A(a) of title 18, United States Code, is amended by striking ''imprisoned not more than 15 years'' and all that follows through ''life.'' and inserting ''imprisoned for any term of years or for life, or both, and, if the death of any person results, shall be imprisoned for any term of years not less than 10 or for life.''.

(C) RECEIVING MILITARY-TYPE TRAINING FROM A FOREIGN TERRORIST ORGANIZATION.—Section 2339D(a) of title 18, United States Code, is amended by striking ''ten years'' and inserting ''25 years''.

(D) ADDITION OF ATTEMPTS AND CONSPIRACIES TO AN OFFENSE RELATING TO MILITARY TRAINING.—Section 2339D(a) of title 18, United States Code, is amended by inserting '', or attempts or conspires to receive,'' after ''receives''.

(b) TERRORIST MURDERS, KIDNAPPINGS, AND ASSAULTS.—

(1) PENALTIES FOR TERRORIST MURDER AND MANSLAUGHTER.—Section 2332(a) of title 18, United States Code, is amended—

(A) in paragraph (1), by striking '', punished by death'' and all that follows and inserting ''and punished by death or imprisoned for life;''; and

(B) in paragraph (2), by striking ''ten years'' and inserting ''30 years''.

(2) ADDITION OF OFFENSE OF TERRORIST KIDNAPPING.—Section 2332 of title 18, United States Code, is amended—

(A) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(B) by inserting after subsection (b) the following:

''(c) KIDNAPPING.—Whoever outside the United States unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away, or attempts or conspires to seize, confine, inveigle, decoy, kidnap, abduct or carry away, a national of the United States shall be fined under this title and imprisoned for any term of years or for life.''.

(3) ADDITION OF SEXUAL ASSAULT TO DEFINITION OF OFFENSE OF TERRORIST ASSAULT.—Section 2332(d) of title 18, United States Code, as redesignated by paragraph (2) of this subsection, is amended—

(A) in paragraph (1), by inserting ''(as defined in section 1365, 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)'' after ''injury'';

(B) in paragraph (2), by inserting ''(as defined in section 1365, 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)'' after ''injury''; and

(C) in the matter following paragraph (2), by striking ''or imprisoned'' and all that follows and inserting ''and imprisoned for any term of years not less than 30 or for life.''.

(c) TERRORIST HOAXES AGAINST FAMILIES OF UNITED STATES SERVICEMEN.—

(1) HOAX STATUTE.—Section 1038 of title 18, United States Code, is amended—

(A) in subsections (a)(1) and (b), by inserting ''or any other offense listed under section 2332b(g)(5)(B) of this title'' after ''title 49,''; and

(B) in subsection (a)(2)—

(i) in subparagraph (A), by striking '', imprisoned not more than 5 years, or both'' and inserting ''and imprisoned for not less than 2 years nor more than 10 years'';

(ii) in subparagraph (B), by striking '', imprisoned not more than 20 years, or both'' and inserting ''and imprisoned for not less than 5 years nor more than 25 years''; and

(iii) in subparagraph (C), by striking '', imprisoned for any term of years or for life, or both'' and inserting ''and imprisoned for any term of years not less than 10 or for life''.

(2) ATTACKS ON UNITED STATES SERVICEMEN.—

(A) IN GENERAL.—Chapter 67 of title 18, United States Code, is amended by adding at the end the following:

''§ 1389. Prohibition on attacks on United States servicemen on account of service

''(a) IN GENERAL.—Whoever knowingly assaults or batters a United States serviceman or an immediate family member of a United States serviceman, or who knowingly destroys or injures the property of such serviceman or immediate family member, on account of the military service of that serviceman or status of that individual as a United States serviceman, or who attempts or conspires to do so, shall—

''(1) in the case of a simple assault, or destruction or injury to property in which the damage or attempted damage to such property is not more than $500, be fined under this title in an amount not less than $500 nor more than $10,000 and imprisoned not more than 2 years;

''(2) in the case of destruction or injury to property in which the damage or attempted damage to such property is more than $500, be fined under this title in an amount not less than $1000 nor more than $100,000 and imprisoned not less than 90 days nor more than 10 years; and

''(3) in the case of a battery, or an assault resulting in bodily injury, be fined under this title in an amount not less than $2500 and imprisoned not less than 2 years nor more than 30 years.

''(b) EXCEPTION.—This section shall not apply to conduct by a person who is subject to the Uniform Code of Military Justice.

''(c) DEFINITIONS.—In this section—

''(1) the term 'Armed Forces' has the meaning given that term in section 1388;

''(2) the term 'immediate family member' has the meaning given that term in section 115; and

''(3) the term 'United States serviceman'—

''(A) means a member of the Armed Forces; and

''(B) includes a former member of the Armed Forces during the 5-year period beginning on the date of the discharge from the Armed Forces of that member of the Armed Forces.''.

(B) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 67 of title 18, United States Code, is amended by adding at the end the following:

''1389. Prohibition on attacks on United States servicemen on account of service.''.

(3) THREATENING COMMUNICATIONS.—

(A) MAILED WITHIN THE UNITED STATES.—Section 876 of title 18, United States Code, is amended by adding at the end the following:

''(e) For purposes of this section, the term 'addressed to any other person' includes an individual (other than the sender), a corporation or other legal person, and a government or agency or component thereof.''.

(B) MAILED TO A FOREIGN COUNTRY.—Section 877 of title 18, United States Code, is amended by adding at the end the following:

''For purposes of this section, the term 'addressed to any person' includes an individual, a corporation or other legal person, and a government or agency or component thereof.''.

(d) DENIAL OF FEDERAL BENEFITS TO CONVICTED TERRORISTS.—

(1) IN GENERAL.—Chapter 113B of title 18, United States Code, as amended by this section, is amended by adding at the end the following:

''§ 2339F. Denial of Federal benefits to terrorists

''(a) IN GENERAL.—Any individual who is convicted of a Federal crime of terrorism (as defined in section 2332b(g)) shall, as provided by the court on motion of the Government, be ineligible for any or all Federal benefits for any term of years or for life.

''(b) FEDERAL BENEFIT DEFINED.—In this section, 'Federal benefit' has the meaning given that term in section 421(d) of the Controlled Substances Act (21 U.S.C. 862(d)).''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 113B of title 18, United States Code, as amended by this section, is amended by adding at the end the following:

''Sec. 2339F. Denial of Federal benefits to terrorists.''.

(e) INVESTIGATION OF TERRORIST CRIMES.—

(1) NONDISCLOSURE OF FISA INVESTIGATIONS.—The following provisions of the Foreign Intelligence Surveillance Act of 1978 are each amended by inserting ''(other than in

proceedings or other civil matters under the immigration laws, as that term is defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17)))'' after ''authority of the United States'':

(A) Subsections (c), (e), and (f) of section 106 (50 U.S.C. 1806).

(B) Subsections (d), (f), and (g) of section 305 (50 U.S.C. 1825).

(C) Subsections (c), (e), and (f) of section 405 (50 U.S.C. 1845).

(2) MULTIDISTRICT SEARCH WARRANTS IN TERRORISM INVESTIGATIONS.—Rule 41(b)(3) of the Federal Rules of Criminal Procedure is amended to read as follows:

''(3) a magistrate judge—in an investigation of—

''(A) a Federal crime of terrorism (as defined in section 2332b(g)(g) of title 18, United States Code); or

''(B) an offense under section 1001 or 1505 of title 18, United States Code, relating to information or purported information concerning a Federal crime of terrorism (as defined in section 2332b(g)(5) of title 18, United States Code)—having authority in any district in which activities related to the Federal crime of terrorism or offense may have occurred, may issue a warrant for a person or property within or outside that district.''.

(3) INCREASED PENALTIES FOR OBSTRUCTION OF JUSTICE IN TERRORISM CASES.—Sections 1001(a) and 1505 of title 18, United States Code, are amended by striking ''8 years'' and inserting ''10 years''.

(f) IMPROVEMENTS TO THE CLASSIFIED INFORMATION PROCEDURES ACT.—

(1) INTERLOCUTORY APPEALS UNDER THE CLASSIFIED INFORMATION PROCEDURES ACT.—Section 7(a) of the Classified Information Procedures Act (18 U.S.C. App.) is amended by adding at the end ''The Government's right to appeal under this section applies without regard to whether the order appealed from was entered under this Act.''.

(2) EX PARTE AUTHORIZATIONS UNDER THE CLASSIFIED INFORMATION PROCEDURES ACT.—Section 4 of the Classified Information Procedures Act (18 U.S.C. App.) is amended—

(A) in the second sentence—

(i) by striking ''may'' and inserting ''shall''; and

(ii) by striking ''written statement to be inspected'' and inserting ''statement to be made ex parte and to be considered''; and

(B) in the third sentence—

(i) by striking ''If the court enters an order granting relief following such an ex parte showing, the'' and inserting ''The''; and

(ii) by inserting '', as well as any summary of the classified information the defendant seeks to obtain,'' after ''text of the statement of the United States''.

(3) APPLICATION OF CLASSIFIED INFORMATION PROCEDURES ACT TO NONDOCUMENTARY INFORMATION.—Section 4 of the Classified Information Procedures Act (18 U.S.C. App.) is amended—

(A) in the section heading, by inserting '', AND ACCESS TO,'' after ''OF'';

(B) by inserting ''(a) DISCOVERY OF CLASSIFIED INFORMATION FROM DOCUMENTS.—'' before the first sentence; and

(C) by adding at the end the following:

''(b) ACCESS TO OTHER CLASSIFIED INFORMATION.—

''(1) If the defendant seeks access through deposition under the Federal Rules of Criminal Procedure or otherwise to non-documentary information from a potential witness or other person which he knows or reasonably believes is classified, he shall notify the attorney for the United States and the district court in writing. Such notice shall specify with particularity the classified information sought by the defendant and the legal basis for such access. At a time set by the court, the United States may oppose access to the classified information.

''(2) If, after consideration of any objection raised by the United States, including any objection asserted on the basis of privilege, the court determines that the defendant is legally entitled to have access to the information specified in the notice required by paragraph (1), the United States may request the substitution of a summary of the classified information or the substitution of a statement admitting relevant facts that the classified information would tend to prove.

''(3) The court shall permit the United States to make its objection to access or its request for such substitution in the form of a statement to be made ex parte and to be considered by the court alone. The entire text of the statement of the United States, as well as any summary of the classified information the defendant seeks to obtain, shall be sealed and preserved in the records of the court and made available to the appellate court in the event of an appeal.

''(4) The court shall grant the request of the United States to substitute a summary of the classified information or to substitute a statement admitting relevant facts that the classified information would tend to prove if it finds that the summary or statement will provide the defendant with substantially the same ability to make his defense as would disclosure of the specific classified information.

''(5) A defendant may not obtain access to classified information subject to this subsection except as provided in this subsection. Any proceeding, whether by deposition under the Federal Rules of Criminal Procedure or otherwise, in which a defendant seeks to obtain access to such classified information not previously authorized by a court for disclosure under this subsection must be discontinued or may proceed only as to lines of inquiry not involving such classified information.''.

SA 3929. Mr. LEAHY (for himself, Mr. KENNEDY, Mr. MENENDEZ, and Ms. MIKULSKI) 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 82, after the matter following line 5, add the following:

SEC. 206. 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 3930. Mr. CARDIN (for himself and Ms. MIKULSKI) 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 54, line 16, 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 3931. Mr. KENNEDY (for himself, Mr. KERRY, and Mr. MENENDEZ) 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 13, strike ''and'' and all that follows through page 8, line 3, and insert the following:

''(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; and

''(5) shall be conducted in a manner consistent with the fourth amendment to the Constitution of the United States.

''(c) 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 (f); and

''(2) the targeting and minimization procedures required pursuant to subsections (d) and (e).

''(d) 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 (h).

''(e) 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) or section 301(4), 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, 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.

''(3) JUDICIAL REVIEW.—The minimization procedures required by this subsection shall be subject to judicial review pursuant to subsection (h).

''(f) CERTIFICATION.—

''(1) IN GENERAL.—

''(A) REQUIREMENT.—

''(i) IN GENERAL.—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.

''(ii) PROCEDURES.—A certification made under this subsection shall attest that there are reasonable procedures in place for determining that the acquisition authorized under subsection (a) 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 (h).

SA 3932. Mr. WHITEHOUSE submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) 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 19, strike line 10 through line 12, and insert the following:

''(ii) or, if the Government appeals an order under this section, until the Court of Review enters an order under subsection (C).

''(C) IMPLEMENTATION PENDING APPEAL.—No later than 30 days after an appeal to it of an order under paragraph (5)(B) directing the correction of a deficiency, the Court of Review shall determine, and enter a corresponding order, whether all or any part of the correction order, as issued or modified, shall be implemented during the pendency of the appeal.''.

On page 21, line 14, strike ''(C)'' and insert ''(D)''.

SA 3933. Mr. WYDEN submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) 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:

Beginning on page 24, strike line 20 and all that following through page 48, line 3, and insert the following:

SEC. 704. ACQUISITION INSIDE THE UNITED STATES OF UNITED STATES PERSONS OUTSIDE THE UNITED STATES.—An acquisition authorized under subsection (a) that occurs inside the United States and—

''(A) constitutes electronic surveillance (regardless of the limitation in section 701(a)), or

''(B) is an acquisition of stored electronic communications or stored electronic data that otherwise requires a court order under this Act,

may not intentionally target a United States person reasonably believed to be outside the United States, except in accordance with title I or III. For the purposes of an acquisition under this subsection, the term 'agent of a foreign power' as used in those titles shall include a person who is an officer or employee of a foreign power.

SEC. 705. OTHER ACQUISITION OF UNITED STATES PERSONS OUTSIDE THE UNITED STATES.—

''(A) JURISDICTION AND SCOPE.—

''(i) JURISDICTION.—The Foreign Intelligence Surveillance Court shall have jurisdiction to enter an order pursuant to subparagraph (C).

''(ii) SCOPE.—No element of the intelligence community may intentionally target, for the purpose of acquiring foreign intelligence information, a United States person reasonably believed to be located outside the United States under circumstances in which the targeted United States person has a reasonable expectation of privacy and a warrant would be required if the acquisition were conducted inside the United States for law enforcement purposes, unless a judge of the Foreign Intelligence Surveillance Court has entered an order or the Attorney General has authorized an emergency acquisition pursuant to subparagraphs (C) or (D) or any other provision of this Act.

''(iii) LIMITATIONS.—

''(I) MOVING OR MISIDENTIFIED TARGETS.—In the event that the targeted United States person is reasonably believed to be in the United States during the pendency of an order issued pursuant to subparagraph (C), such acquisition shall cease until authority is obtained pursuant to this Act or the targeted United States person is again reasonably believed to be located outside the United States during the pendency of an order issued pursuant to subparagraph (C).

''(II) APPLICABILITY.—If the acquisition could be authorized under paragraph (1), the procedures of paragraph (1) shall apply, unless an order or emergency acquisition authority has been obtained under a provision of this Act other than under this section.

''(B) APPLICATION.—Each application for an order under this paragraph shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under subparagraph (A)(i). Each application shall require the approval of the Attorney General based upon the Attorney General's finding that it satisfies the criteria and requirements of such application as set forth in this section and shall include—

''(i) the identity, if known, or a description of the specific United States person who is the target of the acquisition;

''(ii) a statement of the facts and circumstances relied upon to justify the applicant's belief that the target of the acquisition is—

''(I) a United States person reasonably believed to be located outside the United States; and

''(II) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power who is reasonably believed to have access to foreign intelligence information;

''(iii) a certification or certifications by the Assistant to the President for National Security Affairs or an executive branch official or officials designated by the President from among those executive officers employed in the area of national security or defense and appointed by the President with the advice and consent of the Senate—

''(I) that the certifying official deems the information sought to be foreign intelligence information; and

''(II) that a significant purpose of the acquisition is to obtain foreign intelligence information;

''(III) that designates the type of foreign intelligence information being sought according to the categories described in section 101(e); and

''(IV) including a statement of the basis for the certification that the information sought is the type of foreign intelligence information designated;

''(iv) a statement of the proposed minimization procedures consistent with the requirements of section 101(h) or section 301(4);

''(v) a statement of the facts concerning any previous applications that have been made to any judge of the Foreign Intelligence Surveillance Court involving the United States person specified in the application and the action taken on each previous application; and

''(vi) a statement of the period of time for which the acquisition is required to be maintained, provided that such period of time shall not exceed 90 days per application.

''(C) ORDER.—

''(i) FINDINGS.—If, upon an application made pursuant to subparagraph (B), a judge having jurisdiction under subparagraph (A)(i) finds that—

''(I) on the basis of the facts submitted by the applicant there is probable cause to believe that the specified target of the acquisition is—

''(aa) a person reasonably believed to be located outside the United States; and

(bb) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power who is reasonably believed to have access to foreign intelligence information;

''(II) the proposed minimization procedures, with respect to their dissemination provisions, meet the definition of minimization procedures under section 101(h) or section 301(4);

''(III) the certification or certifications required by subparagraph (B) are not clearly erroneous on the basis of the statement made under subparagraph (B)(iii)(IV),

the Court shall issue an ex parte order so stating.

''(ii) PROBABLE CAUSE.—In determining whether or not probable cause exists for purposes of an order under clause (i)(I), a judge having jurisdiction under subsection (A)(i) may consider past activities of the target, as well as facts and circumstances relating to current or future activities of the target. However, no United States person may be considered a foreign power, agent of a foreign power, or officer or employee of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

''(iii) REVIEW.—

''(I) LIMITATIONS ON REVIEW.—Review by a judge having jurisdiction under subparagraph (A)(i) shall be limited to that required to make the findings described in clause (i). The judge shall not have jurisdiction to review the means by which an acquisition under this section may be conducted.

''(II) REVIEW OF PROBABLE CAUSE.—If the judge determines that the facts submitted under subparagraph (B) are insufficient to establish probable cause to issue an order under this subsection, the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subparagraph (E).

''(III) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the minimization procedures applicable to dissemination of information obtained through an acquisition under this subsection do not meet the definition of minimization procedures under section 101(h) or section 301(4), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subparagraph (E).

''(iv) DURATION.—An order under this paragraph shall be effective for a period not to exceed 90 days and such order may be renewed for additional 90-day periods upon submission of renewal applications meeting the requirements of subparagraph (B).

''(v) COMPLIANCE.—At, or prior to, the end of the period of time for which an order or extension is approved under this paragraph, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was disseminated, provided that the judge may not inquire into the circumstances relating to the conduct of the acquisition.

''(D) EMERGENCY AUTHORIZATION.—

''(i) AUTHORITY FOR EMERGENCY AUTHORIZATION.—Notwithstanding any other provision in this subsection, if the Attorney General reasonably determines that—

''(I) an emergency situation exists with respect to the acquisition of foreign intelligence information for which an order may be obtained under subparagraph (C) before an order under that subsection may, with due diligence, be obtained; and

''(II) the factual basis for issuance of an order under this section exists,

the Attorney General may authorize the emergency acquisition if a judge having jurisdiction under subparagraph (A)(i) is informed by the Attorney General or a designee of the Attorney General at the time of such authorization that the decision has been made to conduct such acquisition and if an application in accordance with this subsection is made to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 168 hours after the Attorney General authorizes such acquisition.

''(ii) MINIMIZATION PROCEDURES.—If the Attorney General authorizes such emergency acquisition, the Attorney General shall require that the minimization procedures required by this subparagraph be followed.

''(iii) TERMINATION OF EMERGENCY AUTHORIZATION.—In the absence of an order under subparagraph (C), the acquisition shall terminate when the information sought is obtained, if the application for the order is denied, or after the expiration of 168 hours from the time of authorization by the Attorney General, whichever is earliest.

''(iv) USE OF INFORMATION.—In the event that such application is denied, or in any other case where the acquisition is terminated and no order is issued approving the acquisition, no information obtained or evidence derived from such acquisition, except under circumstances in which the target of the acquisition is determined not to be a United States person during the pendency of the 168-hour emergency acquisition period, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

''(E) APPEAL.—

''(i) APPEAL TO THE COURT OF REVIEW.—The Government may file an appeal with the Foreign Intelligence Surveillance Court of Review for review of an order issued pursuant to subparagraph (C). The Court of Review shall have jurisdiction to consider such appeal and shall provide a written statement for the record of the reasons for a decision under this paragraph.

''(ii) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a writ of certiorari for review of the decision of the Court of Review issued under clause (i). 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.

''(F) JOINT APPLICATIONS AND ORDERS.—If an acquisition targeting a United States person under paragraph 1 or this paragraph is proposed to be conducted both inside and outside the United States, a judge having jurisdiction under subparagraph (A) and section 103(a) may issue simultaneously, upon the request of the Government in a joint application complying with the requirements of subparagraph (B) and section 104 or 303, orders authorizing the proposed acquisition under subparagraph (B) and section 105 or 304, as applicable.

''(G) CONCURRENT AUTHORIZATION.—If an order authorizing electronic surveillance or physical search has been obtained under section 105 or 304 and that order is in effect, the Attorney General may authorize, during the pendency of such order and without an order under this paragraph, an acquisition under this paragraph of foreign intelligence information targeting that United States person while such person is reasonably believed to be located outside the United States. Prior to issuing such an authorization, the Attorney General shall submit dissemination provisions of minimization procedures for such an acquisition to a judge having jurisdiction under subparagraph (A) for approval.

SA 3934. Mr. ROCKEFELLER submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) 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 title I and insert the following:

TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

SEC. 101. ADDITIONAL PROCEDURES REGARDING CERTAIN PERSONS OUTSIDE THE UNITED STATES.

(a) IN GENERAL.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

(1) by striking title VII; and

(2) by adding after title VI the following new title:

''TITLE VII—ADDITIONAL PROCEDURES REGARDING CERTAIN PERSONS OUTSIDE THE UNITED STATES

''SEC. 701. LIMITATION ON DEFINITION OF ELECTRONIC SURVEILLANCE.

''Nothing in the definition of electronic surveillance under section 101(f) shall be construed to encompass surveillance that is targeted in accordance with this title at a person reasonably believed to be located outside the United States.

''SEC. 702. DEFINITIONS.

''(a) IN GENERAL.—The terms 'agent of a foreign power', 'Attorney General', 'contents', 'electronic surveillance', 'foreign intelligence information', 'foreign power', 'minimization procedures', 'person', 'United States', and 'United States person' shall have the meanings given such terms in section 101, except as specifically provided in this title.

''(b) ADDITIONAL DEFINITIONS.—

''(1) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term 'congressional intelligence committees' means—

''(A) the Select Committee on Intelligence of the Senate; and

''(B) the Permanent Select Committee on Intelligence of the House of Representatives.

''(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT; COURT.—The terms 'Foreign Intelligence Surveillance Court' and 'Court' mean the court established by section 103(a).

''(3) FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW; COURT OF REVIEW.—The terms 'Foreign Intelligence Surveillance Court of Review' and 'Court of Review' mean the court established by section 103(b).

''(4) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term 'electronic communication service provider' means—

''(A) a telecommunications carrier, as that term is defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153);

''(B) a provider of electronic communication service, as that term is defined in section 2510 of title 18, United States Code;

''(C) a provider of a remote computing service, as that term is defined in section 2711 of title 18, United States Code;

''(D) any other communication service provider who has access to wire or electronic communications either as such communications are transmitted or as such communications are stored; or

''(E) an officer, employee, or agent of an entity described in subparagraph (A), (B), (C), or (D).

''(5) ELEMENT OF THE INTELLIGENCE COMMUNITY.—The term 'element of the intelligence community' means an element of the intelligence community specified in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

''SEC. 703. PROCEDURES FOR TARGETING CERTAIN PERSONS OUTSIDE THE UNITED STATES OTHER THAN UNITED STATES PERSONS.

''(a) AUTHORIZATION.—Notwithstanding any other law, the Attorney General and the Director of National Intelligence may authorize jointly, for periods of up to 1 year, the targeting of persons reasonably believed to be located outside the United States to acquire foreign intelligence information.

''(b) LIMITATIONS.—An acquisition authorized under subsection (a)—

''(1) may not intentionally target any person known at the time of acquisition to be located in the United States;

''(2) may not intentionally target a person reasonably believed to be located outside the United States if the purpose of such acquisition is to target a particular, known person reasonably believed to be in the United States, except in accordance with title I or title III;

''(3) may not intentionally target a United States person reasonably believed to be located outside the United States, except in accordance with sections 704, 705, or 706; and

''(4) shall be conducted in a manner consistent with the fourth amendment to the Constitution of the United States.

''(c) 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 (f); and

''(2) the targeting and minimization procedures required pursuant to subsections (d) and (e).

''(d) 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.

''(2) JUDICIAL REVIEW.—The procedures referred to in paragraph (1) shall be subject to judicial review pursuant to subsection (h).

''(e) 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) or section 301(4), minimization procedures for acquisitions authorized under subsection (a).

''(2) JUDICIAL REVIEW.—The minimization procedures required by this subsection shall be subject to judicial review pursuant to subsection (h).

''(f) 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 that such procedures have been approved by, or will be submitted in not more than 5 days for approval by, the Foreign Intelligence Surveillance Court pursuant to subsection (h);

''(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;

''(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) or section 301(4); and

''(II) have been approved by, or will be submitted in not more than 5 days for approval by, the Foreign Intelligence Surveillance Court pursuant to subsection (h);

''(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 (h).

''(g) DIRECTIVES AND JUDICIAL REVIEW OF 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, which shall have jurisdiction to review such a petition.

''(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.

''(E) 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.

''(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, which shall have jurisdiction to review such a petition.

''(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.

''(h) JUDICIAL REVIEW OF CERTIFICATIONS AND PROCEDURES.—

''(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 (c) and the targeting and minimization procedures adopted pursuant to subsections (d) and (e).

''(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 (f) to determine whether the certification contains all the required elements.

''(3) TARGETING PROCEDURES.—The Court shall review the targeting procedures required by subsection (d) 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.

''(4) MINIMIZATION PROCEDURES.—The Court shall review the minimization procedures required by subsection (e) to assess whether such procedures meet the definition of minimization procedures under section 101(h) or section 301(4).

''(5) ORDERS.—

''(A) APPROVAL.—If the Court finds that a certification required by subsection (f) contains all of the required elements and that the targeting and minimization procedures required by subsections (d) and (e) are consistent with the requirements of those subsections and with the fourth amendment to the Constitution of the United States, the Court shall enter an order approving the continued use of the procedures for the acquisition authorized under subsection (a).

''(B) CORRECTION OF DEFICIENCIES.—If the Court finds that a certification required by subsection (f) does not contain all of the required elements, or that the procedures required by subsections (d) and (e) are not consistent with the requirements of those subsections or the fourth amendment to the Constitution of the United States, the Court shall issue an order directing the Government to, at the Government's election and to the extent required by the Court's order—

''(i) correct any deficiency identified by the Court's order not later than 30 days after the date the Court issues the order; or

''(ii) cease the acquisition authorized under subsection (a).

''(C) REQUIREMENT FOR WRITTEN STATEMENT.—In support of its orders under this subsection, the Court shall provide, simultaneously with the orders, for the record a written statement of its reasons.

''(6) APPEAL.—

''(A) APPEAL TO THE COURT OF REVIEW.—The Government may appeal any order under this section to the Foreign Intelligence Surveillance Court of Review, which shall have jurisdiction to review such order. For any decision affirming, reversing, or modifying an order of the Foreign Intelligence Surveillance Court, the Court of Review shall provide for the record a written statement of its reasons.

''(B) CONTINUATION OF ACQUISITION PENDING REHEARING OR APPEAL.—Any acquisitions affected by an order under paragraph (5)(B) may continue—

''(i) during the pendency of any rehearing of the order by the Court en banc; and

''(ii) or, if the Government appeals an order under this section, until the Court of Review enters an order under subparagraph (C).

''(C) IMPLEMENTATION PENDING APPEAL.—No later than 30 days after an appeal to it of an order under paragraph (5)(B) directing the correction of a deficiency, the Court of Review shall determine, and enter a corresponding order, whether all or any part of the correction order, as issued or modified, shall be implemented during the pendency of the appeal.

''(D) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a writ of certiorari for review of a 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) EXPEDITED JUDICIAL PROCEEDINGS.—Judicial proceedings under this section shall be conducted as expeditiously as possible.

''(j) MAINTENANCE AND SECURITY OF RECORDS AND PROCEEDINGS.—

''(1) STANDARDS.—A record of a proceeding under this section, including petitions filed, orders granted, and statements of reasons for decision, shall be maintained under security measures adopted by the Chief Justice of the United States, in consultation with the Attorney General and the Director of National Intelligence.

''(2) FILING AND REVIEW.—All petitions under this section shall be filed under seal. In any proceedings under this section, the court shall, upon request of the Government, review ex parte and in camera any Government submission, or portions of a submission, which may include classified information.

''(3) RETENTION OF RECORDS.—A directive made or an order granted under this section shall be retained for a period of not less than 10 years from the date on which such directive or such order is made.

''(k) ASSESSMENTS AND REVIEWS.—

''(1) SEMIANNUAL ASSESSMENT.—Not less frequently than once every 6 months, the Attorney General and Director of National Intelligence shall assess compliance with the targeting and minimization procedures required by subsections (e) and (f) and shall submit each such assessment to—

''(A) the Foreign Intelligence Surveillance Court; and

''(B) the congressional intelligence committees.

''(2) AGENCY ASSESSMENT.—The Inspectors General of the Department of Justice and of any element of the intelligence community authorized to acquire foreign intelligence information under subsection (a) with respect to their department, agency, or element—

''(A) are authorized to review the compliance with the targeting and minimization procedures required by subsections (d) and (e);

''(B) with respect to acquisitions authorized under subsection (a), shall review the number of disseminated intelligence reports containing a reference to a United States person identity and the number of United States person identities subsequently disseminated by the element concerned in response to requests for identities that were not referred to by name or title in the original reporting;

''(C) with respect to acquisitions authorized under subsection (a), shall review the number of targets that were later determined to be located in the United States and, to the extent possible, whether their communications were reviewed; and

''(D) shall provide each such review to—

''(i) the Attorney General;

''(ii) the Director of National Intelligence; and

''(iii) the congressional intelligence committees.

''(3) ANNUAL REVIEW.—

''(A) REQUIREMENT TO CONDUCT.—The head of an element of the intelligence community conducting an acquisition authorized under subsection (a) shall direct the element to conduct an annual review to determine whether there is reason to believe that foreign intelligence information has been or will be obtained from the acquisition. The annual review shall provide, with respect to such acquisitions authorized under subsection (a)—

''(i) an accounting of the number of disseminated intelligence reports containing a reference to a United States person identity;

''(ii) an accounting of the number of United States person identities subsequently disseminated by that element in response to requests for identities that were not referred to by name or title in the original reporting;

''(iii) the number of targets that were later determined to be located in the United States and, to the extent possible, whether their communications were reviewed; and

''(iv) a description of any procedures developed by the head of an element of the intelligence community and approved by the Director of National Intelligence to assess, in a manner consistent with national security, operational requirements and the privacy interests of United States persons, the extent to which the acquisitions authorized under subsection (a) acquire the communications of United States persons, as well as the results of any such assessment.

''(B) USE OF REVIEW.—The head of each element of the intelligence community that conducts an annual review under subparagraph (A) shall use each such review to evaluate the adequacy of the minimization procedures utilized by such element or the application of the minimization procedures to a particular acquisition authorized under subsection (a).

''(C) PROVISION OF REVIEW.—The head of each element of the intelligence community that conducts an annual review under subparagraph (A) shall provide such review to—

''(i) the Foreign Intelligence Surveillance Court;

''(ii) the Attorney General;

''(iii) the Director of National Intelligence; and

''(iv) the congressional intelligence committees.

''SEC. 704. CERTAIN ACQUISITIONS INSIDE THE UNITED STATES OF UNITED STATES PERSONS OUTSIDE THE UNITED STATES.

''(a) JURISDICTION OF THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.—

''(1) IN GENERAL.—The Foreign Intelligence Surveillance Court shall have jurisdiction to enter an order approving the targeting of a United States person reasonably believed to be located outside the United States to acquire foreign intelligence information, if such acquisition constitutes electronic surveillance (as defined in section 101(f), regardless of the limitation of section 701) or the acquisition of stored electronic communications or stored electronic data that requires an order under this Act, and such acquisition is conducted within the United States.

''(2) LIMITATION.—In the event that a United States person targeted under this subsection is reasonably believed to be located in the United States during the pendency of an order issued pursuant to subsection (c), such acquisition shall cease until authority, other than under this section, is obtained pursuant to this Act or the targeted United States person is again reasonably believed to be located outside the United States during the pendency of an order issued pursuant to subsection (c).

''(b) APPLICATION.—

''(1) IN GENERAL.—Each application for an order under this section shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under subsection (a)(1). Each application shall require the approval of the Attorney General based upon the Attorney General's finding that it satisfies the criteria and requirements of such application, as set forth in this section, and shall include—

''(A) the identity of the Federal officer making the application;

''(B) the identity, if known, or a description of the United States person who is the target of the acquisition;

''(C) a statement of the facts and circumstances relied upon to justify the applicant's belief that the United States person who is the target of the acquisition is—

''(i) a person reasonably believed to be located outside the United States; and

''(ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

''(D) a statement of the proposed minimization procedures consistent with the requirements of section 101(h) or section 301(4);

''(E) a description of the nature of the information sought and the type of communications or activities to be subjected to acquisition;

''(F) a certification made by the Attorney General or an official specified in section 104(a)(6) that—

''(i) the certifying official deems the information sought to be foreign intelligence information;

''(ii) a significant purpose of the acquisition is to obtain foreign intelligence information;

''(iii) such information cannot reasonably be obtained by normal investigative techniques;

''(iv) designates the type of foreign intelligence information being sought according to the categories described in section 101(e); and

''(v) includes a statement of the basis for the certification that—

''(I) the information sought is the type of foreign intelligence information designated; and

''(II) such information cannot reasonably be obtained by normal investigative techniques;

''(G) a summary statement of the means by which the acquisition will be conducted and whether physical entry is required to effect the acquisition;

''(H) the identity of any electronic communication service provider necessary to effect the acquisition, provided, however, that the application is not required to identify the specific facilities, places, premises, or property at which the acquisition authorized under this section will be directed or conducted;

''(I) a statement of the facts concerning any previous applications that have been made to any judge of the Foreign Intelligence Surveillance Court involving the United States person specified in the application and the action taken on each previous application; and

''(J) a statement of the period of time for which the acquisition is required to be maintained, provided that such period of time shall not exceed 90 days per application.

''(2) OTHER REQUIREMENTS OF THE ATTORNEY GENERAL.—The Attorney General may require any other affidavit or certification from any other officer in connection with the application.

''(3) OTHER REQUIREMENTS OF THE JUDGE.—The judge may require the applicant to furnish such other information as may be necessary to make the findings required by subsection (c)(1).

''(c) ORDER.—

''(1) FINDINGS.—Upon an application made pursuant to subsection (b), the Foreign Intelligence Surveillance Court shall enter an ex parte order as requested or as modified approving the acquisition if the Court finds that—

''(A) the application has been made by a Federal officer and approved by the Attorney General;

''(B) on the basis of the facts submitted by the applicant, for the United States person who is the target of the acquisition, there is probable cause to believe that the target is—

''(i) a person reasonably believed to be located outside the United States; and

''(ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

''(C) the proposed minimization procedures meet the definition of minimization procedures under section 101(h) or section 301(4); and

''(D) the application which has been filed contains all statements and certifications required by subsection (b) and the certification or certifications are not clearly erroneous on the basis of the statement made under subsection (b)(1)(F)(v) and any other information furnished under subsection (b)(3).

''(2) PROBABLE CAUSE.—In determining whether or not probable cause exists for purposes of an order under paragraph (1), a judge having jurisdiction under subsection (a)(1) may consider past activities of the target, as well as facts and circumstances relating to current or future activities of the target. However, no United States person may be considered a foreign power, agent of a foreign power, or officer or employee of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

''(3) REVIEW.—

''(A) LIMITATION ON REVIEW.—Review by a judge having jurisdiction under subsection (a)(1) shall be limited to that required to make the findings described in paragraph (1).

''(B) REVIEW OF PROBABLE CAUSE.—If the judge determines that the facts submitted under subsection (b) are insufficient to establish probable cause to issue an order under paragraph (1), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (f).

''(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the proposed minimization procedures required under paragraph (1)(C) do not meet the definition of minimization procedures under section 101(h) or section 301(4), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (f).

''(D) REVIEW OF CERTIFICATION.—If the judge determines that an application required by subsection (2) does not contain all of the required elements, or that the certification or certifications are clearly erroneous on the basis of the statement made under subsection (b)(1)(F)(v) and any other information furnished under subsection (b)(3), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (f).

''(4) SPECIFICATIONS.—An order approving an acquisition under this subsection shall specify—

''(A) the identity, if known, or a description of the United States person who is the target of the acquisition identified or described in the application pursuant to subsection (b)(1)(B);

''(B) if provided in the application pursuant to subsection (b)(1)(H), the nature and location of each of the facilities or places at which the acquisition will be directed;

''(C) the nature of the information sought to be acquired and the type of communications or activities to be subjected to acquisition;

''(D) the means by which the acquisition will be conducted and whether physical entry is required to effect the acquisition; and

''(E) the period of time during which the acquisition is approved.

''(5) DIRECTIONS.—An order approving acquisitions under this subsection shall direct—

''(A) that the minimization procedures be followed;

''(B) an electronic communication service provider to provide to the Government forthwith all information, facilities, or assistance necessary to accomplish the acquisition authorized under this subsection 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;

''(C) an electronic communication service provider to maintain under security procedures approved by the Attorney General any records concerning the acquisition or the aid furnished that such electronic communication service provider wishes to maintain; and

''(D) that the Government compensate, at the prevailing rate, such electronic communication service provider for providing such information, facilities, or assistance.

''(6) DURATION.—An order approved under this paragraph shall be effective for a period not to exceed 90 days and such order may be renewed for additional 90-day periods upon submission of renewal applications meeting the requirements of subsection (b).

''(7) COMPLIANCE.—At or prior to the end of the period of time for which an acquisition is approved by an order or extension under this section, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.

''(d) EMERGENCY AUTHORIZATION.—

''(1) AUTHORITY FOR EMERGENCY AUTHORIZATION.—Notwithstanding any other provision of this Act, if the Attorney General reasonably determines that—

''(A) an emergency situation exists with respect to the acquisition of foreign intelligence information for which an order may be obtained under subsection (c) before an order authorizing such acquisition can with due diligence be obtained; and

''(B) the factual basis for issuance of an order under this subsection to approve such acquisition exists,

the Attorney General may authorize the emergency acquisition if a judge having jurisdiction under subsection (a)(1) is informed by the Attorney General, or a designee of the Attorney General, at the time of such authorization that the decision has been made to conduct such acquisition and if an application in accordance with this subsection is made to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 168 hours after the Attorney General authorizes such acquisition.

''(2) MINIMIZATION PROCEDURES.—If the Attorney General authorizes such emergency acquisition, the Attorney General shall require that the minimization procedures required by this subsection for the issuance of a judicial order be followed.

''(3) TERMINATION OF EMERGENCY AUTHORIZATION.—In the absence of a judicial order approving such acquisition, the acquisition shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 168 hours from the time of authorization by the Attorney General, whichever is earliest.

''(4) USE OF INFORMATION.—In the event that such application for approval is denied, or in any other case where the acquisition is terminated and no order is issued approving the acquisition, no information obtained or evidence derived from such acquisition, except under circumstances in which the target of the acquisition is determined not to be a United States person during the pendency of the 168-hour emergency acquisition period, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

''(e) 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 an order or request for emergency assistance issued pursuant to subsections (c) or (d).

''(f) APPEAL.—

''(1) APPEAL TO THE FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW.—The Government may file an appeal with the Foreign Intelligence Surveillance Court of Review for review of an order issued pursuant to subsection (c). The Court of Review shall have jurisdiction to consider such appeal and shall provide a written statement for the record of the reasons for a decision under this paragraph.

''(2) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a writ of certiorari for review of the decision of the Court of Review issued under paragraph (1). 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.

''SEC. 705. OTHER ACQUISITIONS TARGETING UNITED STATES PERSONS OUTSIDE THE UNITED STATES.

''(a) JURISDICTION AND SCOPE.—

''(1) JURISDICTION.—The Foreign Intelligence Surveillance Court shall have jurisdiction to enter an order pursuant to subsection (c).

''(2) SCOPE.—No element of the intelligence community may intentionally target, for the purpose of acquiring foreign intelligence information, a United States person reasonably believed to be located outside the United States under circumstances in which the targeted United States person has a reasonable expectation of privacy and a warrant would be required if the acquisition were conducted inside the United States for law enforcement purposes, unless a judge of the Foreign Intelligence Surveillance Court has entered an order or the Attorney General has authorized an emergency acquisition pursuant to subsections (c) or (d) or any other provision of this Act.

''(3) LIMITATIONS.—

''(A) MOVING OR MISIDENTIFIED TARGETS.—In the event that the targeted United States person is reasonably believed to be in the United States during the pendency of an order issued pursuant to subsection (c), such acquisition shall cease until authority is obtained pursuant to this Act or the targeted United States person is again reasonably believed to be located outside the United States during the pendency of an order issued pursuant to subsection (c).

''(B) APPLICABILITY.—If the acquisition is to be conducted inside the United States and could be authorized under section 704, the procedures of section 704 shall apply, unless an order or emergency acquisition authority has been obtained under a provision of this Act other than under this section.

''(b) APPLICATION.—Each application for an order under this section shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under subsection (a)(1). Each application shall require the approval of the Attorney General based upon the Attorney General's finding that it satisfies the criteria and requirements of such application as set forth in this section and shall include—

''(1) the identity, if known, or a description of the specific United States person who is the target of the acquisition;

''(2) a statement of the facts and circumstances relied upon to justify the applicant's belief that the United States person who is the target of the acquisition is—

''(A) a person reasonably believed to be located outside the United States; and

''(B) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

''(3) a statement of the proposed minimization procedures consistent with the requirements of section 101(h) or section 301(4);

''(4) a certification made by the Attorney General, an official specified in section 104(a)(6), or the head of an element of the intelligence community that—

''(A) the certifying official deems the information sought to be foreign intelligence information; and

''(B) a significant purpose of the acquisition is to obtain foreign intelligence information;

''(5) a statement of the facts concerning any previous applications that have been made to any judge of the Foreign Intelligence Surveillance Court involving the United States person specified in the application and the action taken on each previous application; and

''(6) a statement of the period of time for which the acquisition is required to be maintained, provided that such period of time shall not exceed 90 days per application.

''(c) ORDER.—

''(1) FINDINGS.—If, upon an application made pursuant to subsection (b), a judge having jurisdiction under subsection (a) finds that—

''(A) on the basis of the facts submitted by the applicant, for the United States person who is the target of the acquisition, there is probable cause to believe that the target is—

''(i) a person reasonably believed to be located outside the United States; and

''(ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

''(B) the proposed minimization procedures, with respect to their dissemination provisions, meet the definition of minimization procedures under section 101(h) or section 301(4); and

''(C) the application which has been filed contains all statements and certifications required by subsection (b) and the certification provided under subsection (b)(4) is not clearly erroneous on the basis of the information furnished under subsection (b),

the Court shall issue an ex parte order so stating.

''(2) PROBABLE CAUSE.—In determining whether or not probable cause exists for purposes of an order under paragraph (1)(A), a judge having jurisdiction under subsection (a)(1) may consider past activities of the target, as well as facts and circumstances relating to current or future activities of the target. However, no United States person may be considered a foreign power, agent of a foreign power, or officer or employee of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

''(3) REVIEW.—

''(A) LIMITATIONS ON REVIEW.—Review by a judge having jurisdiction under subsection (a)(1) shall be limited to that required to make the findings described in paragraph (1). The judge shall not have jurisdiction to review the means by which an acquisition under this section may be conducted.

''(B) REVIEW OF PROBABLE CAUSE.—If the judge determines that the facts submitted under subsection (b) are insufficient to establish probable cause to issue an order under this subsection, the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may

appeal an order under this clause pursuant to subsection (e).

''(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the minimization procedures applicable to dissemination of information obtained through an acquisition under this subsection do not meet the definition of minimization procedures under section 101(h) or section 301(4), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (e).

''(D) SCOPE OF REVIEW OF CERTIFICATION.—If the judge determines that the certification provided under subsection (b)(4) is clearly erroneous on the basis of the information furnished under subsection (b), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (e).

''(4) DURATION.—An order under this paragraph shall be effective for a period not to exceed 90 days and such order may be renewed for additional 90-day periods upon submission of renewal applications meeting the requirements of subsection (b).

''(5) COMPLIANCE.—At or prior to the end of the period of time for which an order or extension is granted under this section, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was disseminated, provided that the judge may not inquire into the circumstances relating to the conduct of the acquisition.

''(d) EMERGENCY AUTHORIZATION.—

''(1) AUTHORITY FOR EMERGENCY AUTHORIZATION.—Notwithstanding any other provision in this subsection, if the Attorney General reasonably determines that—

''(A) an emergency situation exists with respect to the acquisition of foreign intelligence information for which an order may be obtained under subsection (c) before an order under that subsection may, with due diligence, be obtained; and

''(B) the factual basis for issuance of an order under this section exists,

the Attorney General may authorize the emergency acquisition if a judge having jurisdiction under subsection (a)(1) is informed by the Attorney General or a designee of the Attorney General at the time of such authorization that the decision has been made to conduct such acquisition and if an application in accordance with this subsection is made to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 168 hours after the Attorney General authorizes such acquisition.

''(2) MINIMIZATION PROCEDURES.—If the Attorney General authorizes such emergency acquisition, the Attorney General shall require that the minimization procedures required by this subsection be followed.

''(3) TERMINATION OF EMERGENCY AUTHORIZATION.—In the absence of an order under subsection (c), the acquisition shall terminate when the information sought is obtained, if the application for the order is denied, or after the expiration of 168 hours from the time of authorization by the Attorney General, whichever is earliest.

''(4) USE OF INFORMATION.—In the event that such application is denied, or in any other case where the acquisition is terminated and no order is issued approving the acquisition, no information obtained or evidence derived from such acquisition, except under circumstances in which the target of the acquisition is determined not to be a United States person during the pendency of the 168-hour emergency acquisition period, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

''(e) APPEAL.—

''(1) APPEAL TO THE COURT OF REVIEW.—The Government may file an appeal with the Foreign Intelligence Surveillance Court of Review for review of an order issued pursuant to subsection (c). The Court of Review shall have jurisdiction to consider such appeal and shall provide a written statement for the record of the reasons for a decision under this paragraph.

''(2) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a writ of certiorari for review of the decision of the Court of Review issued under paragraph (1). 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.

''SEC. 706. JOINT APPLICATIONS AND CONCURRENT AUTHORIZATIONS.

''(a) JOINT APPLICATIONS AND ORDERS.—If an acquisition targeting a United States person under section 704 or section 705 is proposed to be conducted both inside and outside the United States, a judge having jurisdiction under section 704(a)(1) or section 705(a)(1) may issue simultaneously, upon the request of the Government in a joint application complying with the requirements of section 704(b) or section 705(b), orders under section 704(b) or section 705(b), as applicable.

''(b) CONCURRENT AUTHORIZATION.—If an order authorizing electronic surveillance or physical search has been obtained under section 105 or section 304 and that order is still in effect, the Attorney General may authorize, without an order under section 704 or section 705, an acquisition of foreign intelligence information targeting that United States person while such person is reasonably believed to be located outside the United States.

''SEC. 707. USE OF INFORMATION ACQUIRED UNDER TITLE VII.

''(a) INFORMATION ACQUIRED UNDER SECTION 703.—Information acquired from an acquisition conducted under section 703 shall be deemed to be information acquired from an electronic surveillance pursuant to title I for purposes of section 106, except for the purposes of subsection (j) of such section.

''(b) INFORMATION ACQUIRED UNDER SECTION 704.—Information acquired from an acquisition conducted under section 704 shall be deemed to be information acquired from an electronic surveillance pursuant to title I for purposes of section 106.

''SEC. 708. CONGRESSIONAL OVERSIGHT.

''(a) SEMIANNUAL REPORT.—Not less frequently than once every 6 months, the Attorney General shall fully inform, in a manner consistent with national security, the congressional intelligence committees, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives, concerning the implementation of this title.

''(b) CONTENT.—Each report made under subparagraph (a) shall include—

''(1) with respect to section 703—

''(A) any certifications made under subsection 703(f) during the reporting period;

''(B) any directives issued under subsection 703(g) during the reporting period;

''(C) a description of the judicial review during the reporting period of any such certifications and targeting and minimization procedures utilized with respect to such acquisition, including a copy of any order or pleading in connection with such review that contains a significant legal interpretation of the provisions of this section;

''(D) any actions taken to challenge or enforce a directive under paragraphs (4) or (5) of section 703(g);

''(E) any compliance reviews conducted by the Department of Justice or the Office of the Director of National Intelligence of acquisitions authorized under subsection 703(a);

''(F) a description of any incidents of noncompliance with a directive issued by the Attorney General and the Director of National Intelligence under subsection 703(g), including—

''(i) incidents of noncompliance by an element of the intelligence community with procedures adopted pursuant to subsections (d) and (e) of section 703; and

''(ii) incidents of noncompliance by a specified person to whom the Attorney General and Director of National Intelligence issued a directive under subsection 703(g); and

''(G) any procedures implementing this section;

''(2) with respect to section 704—

''(A) the total number of applications made for orders under section 704(b);

''(B) the total number of such orders either granted, modified, or denied; and

''(C) the total number of emergency acquisitions authorized by the Attorney General under section 704(d) and the total number of subsequent orders approving or denying such acquisitions; and

''(3) with respect to section 705—

''(A) the total number of applications made for orders under 705(b);

''(B) the total number of such orders either granted, modified, or denied; and

''(C) the total number of emergency acquisitions authorized by the Attorney General under subsection 705(d) and the total number of subsequent orders approving or denying such applications.''.

(b) 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—

(1) by striking the item relating to title VII;

(2) by striking the item relating to section 701; and

(3) by adding at the end the following:

''TITLE VII—ADDITIONAL PROCEDURES REGARDING CERTAIN PERSONS OUTSIDE THE UNITED STATES

''Sec. 701. Limitation on definition of electronic surveillance.
''Sec. 702. Definitions.
''Sec. 703. Procedures for targeting certain persons outside the United States other than United States persons.
''Sec. 704. Certain acquisitions inside the United States of United States persons outside the United States.
''Sec. 705. Other acquisitions targeting United States persons outside the United States.
''Sec. 706. Joint applications and concurrent authorizations.
''Sec. 707. Use of information acquired under title VII.
''Sec. 708. Congressional oversight.''.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TITLE 18, UNITED STATES CODE.—

(A) SECTION 2232.—Section 2232(e) of title 18, United States Code, is amended by inserting ''(as defined in section 101(f) of the Foreign Intelligence Surveillance Act of 1978, regardless of the limitation of section 701 of that Act)'' after ''electronic surveillance''.

(B) SECTION 2511.—Section 2511(2)(a)(ii)(A) of title 18, United States Code, is amended by inserting ''or a court order pursuant to section 705 of the Foreign Intelligence Surveillance Act of 1978'' after ''assistance''.

(2) FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.—

(A) SECTION 109.—Section 109 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1809) is amended 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.''.

(B) SECTION 110.—Section 110 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1810) is amended by—

(i) adding an ''(a)'' before ''CIVIL ACTION'',

(ii) redesignating subsections (a) through (c) as paragraphs (1) through (3), respectively; and

(iii) adding at the end the following:

''(b) 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) SECTION 601.—Section 601(a)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1871(a)(1)) is amended by striking subparagraphs (C) and (D) and inserting the following:

''(C) pen registers under section 402;

''(D) access to records under section 501;

''(E) acquisitions under section 704; and

''(F) acquisitions under section 705;''.

(d) TERMINATION OF AUTHORITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsections (a)(2), (b), and (c) shall cease to have effect on December 31, 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

(2) CONTINUING APPLICABILITY.—Section 703(g)(3) of the Foreign Intelligence Surveillance Act of 1978 (as amended by subsection (a)) shall remain in effect with respect to any directive issued pursuant to section 703(g) of that Act (as so amended) during the period such directive was in effect. Section 704(e) of the Foreign Intelligence Surveillance Act of 1978 (as amended by subsection (a)) shall remain in effect with respect to an order or request for emergency assistance under that section. The use of information acquired by an acquisition conducted under section 703 of that Act (as so amended) shall continue to be governed by the provisions of section 707 of that Act (as so amended).

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(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1809(a)) is amended 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''.

(c) CONFORMING AMENDMENTS.—

(1) TITLE 18, UNITED STATES CODE.—Section 2511(2)(a) of title 18, United States Code, is amended 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.''.

(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.''.

SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN COURT ORDERS UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

(a) INCLUSION OF CERTAIN ORDERS IN SEMI-ANNUAL REPORTS OF ATTORNEY GENERAL.—Subsection (a)(5) of section 601 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1871) is amended by striking ''(not including orders)'' and inserting '', orders,''.

(b) REPORTS BY ATTORNEY GENERAL ON CERTAIN OTHER ORDERS.—Such section 601, as amended by subsection (a), is further amended by adding at the end the following:

''(c) The Attorney General shall submit to the committees of Congress referred to in subsection (a) a copy of any decision, order, or opinion issued by the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review that includes significant construction or interpretation of any provision of this Act not later than 45 days after such decision, order, or opinion is issued.''.

(c) DEFINITIONS.—Such section 601, as amended by subsections (a) and (b), is further amended by adding at the end the following:

''(d) DEFINITIONS.—In this section:

''(1) FOREIGN INTELLIGENCE SURVEILLANCE COURT; COURT.—The term 'Foreign Intelligence Surveillance Court' means the court established by section 103(a).

''(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW; COURT OF REVIEW.—The term 'Foreign Intelligence Surveillance Court of Review' means the court established by section 103(b).''.

SEC. 104. APPLICATIONS FOR COURT ORDERS.

Section 104 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804) is amended—

(1) in subsection (a)—

(A) by striking paragraphs (2) and (11);

(B) by redesignating paragraphs (3) through (10) as paragraphs (2) through (9), respectively;

(C) in paragraph (5), as redesignated by subparagraph (B) of this paragraph, by striking ''detailed'';

(D) in paragraph (6), as redesignated by subparagraph (B) of this paragraph, in the matter preceding subparagraph (A)—

(i) by striking ''Affairs or'' and inserting ''Affairs,''; and

(ii) by striking ''Senate—'' and inserting ''Senate, or the Deputy Director of the Federal Bureau of Investigation, if designated by the President as a certifying official—'';

(E) in paragraph (7), as redesignated by subparagraph (B) of this paragraph, by striking ''statement of'' and inserting ''summary statement of'';

(F) in paragraph (8), as redesignated by subparagraph (B) of this paragraph, by adding ''and'' at the end; and

(G) in paragraph (9), as redesignated by subparagraph (B) of this paragraph, by striking ''; and'' and inserting a period;

(2) by striking subsection (b);

(3) by redesignating subsections (c) through (e) as subsections (b) through (d), respectively; and

(4) in paragraph (1)(A) of subsection (d), as redesignated by paragraph (3) of this subsection, by striking ''or the Director of National Intelligence'' and inserting ''the Director of National Intelligence, or the Director of the Central Intelligence Agency''.

SEC. 105. ISSUANCE OF AN ORDER.

Section 105 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805) is amended—

(1) in subsection (a)—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively;

(2) in subsection (b), by striking ''(a)(3)'' and inserting ''(a)(2)'';

(3) in subsection (c)(1)—

(A) in subparagraph (D), by adding ''and'' at the end;

(B) in subparagraph (E), by striking ''; and'' and inserting a period; and

(C) by striking subparagraph (F);

(4) by striking subsection (d);

(5) by redesignating subsections (e) through (i) as subsections (d) through (h), respectively;

(6) by amending subsection (e), as redesignated by paragraph (5) of this section, to read as follows:

''(e)(1) Notwithstanding any other provision of this title, the Attorney General may authorize the emergency employment of electronic surveillance if the Attorney General reasonably—

''(A) determines that an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained;

''(B) determines that the factual basis for issuance of an order under this title to approve such electronic surveillance exists;

''(C) informs, either personally or through a designee, a judge having jurisdiction under section 103 at the time of such authorization that the decision has been made to employ emergency electronic surveillance; and

''(D) makes an application in accordance with this title to a judge having jurisdiction under section 103 as soon as practicable, but not later than 168 hours after the Attorney General authorizes such surveillance.

''(2) If the Attorney General authorizes the emergency employment of electronic surveillance under paragraph (1), the Attorney General shall require that the minimization procedures required by this title for the issuance of a judicial order be followed.

''(3) In the absence of a judicial order approving such electronic surveillance, the surveillance shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 168 hours from the time of authorization by the Attorney General, whichever is earliest.

''(4) A denial of the application made under this subsection may be reviewed as provided in section 103.

''(5) In the event that such application for approval is denied, or in any other case where the electronic surveillance is terminated and no order is issued approving the surveillance, no information obtained or evidence derived from such surveillance shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such surveillance shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

''(6) The Attorney General shall assess compliance with the requirements of paragraph (5).''; and

(7) by adding at the end the following:

''(i) In any case in which the Government makes an application to a judge under this title to conduct electronic surveillance involving communications and the judge grants such application, upon the request of the applicant, the judge shall also authorize the installation and use of pen registers and trap and trace devices, and direct the disclosure of the information set forth in section 402(d)(2).''.

SEC. 106. USE OF INFORMATION.

Subsection (i) of section 106 of the Foreign Intelligence Surveillance Act of 1978 (8 U.S.C. 1806) is amended by striking ''radio communication'' and inserting ''communication''.

SEC. 107. AMENDMENTS FOR PHYSICAL SEARCHES.

(a) APPLICATIONS.—Section 303 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1823) is amended—

(1) in subsection (a)—

(A) by striking paragraph (2);

(B) by redesignating paragraphs (3) through (9) as paragraphs (2) through (8), respectively;

(C) in paragraph (2), as redesignated by subparagraph (B) of this paragraph, by striking ''detailed'';

(D) in paragraph (3)(C), as redesignated by subparagraph (B) of this paragraph, by inserting ''or is about to be'' before ''owned''; and

(E) in paragraph (6), as redesignated by subparagraph (B) of this paragraph, in the matter preceding subparagraph (A)—

(i) by striking ''Affairs or'' and inserting ''Affairs,''; and

(ii) by striking ''Senate—'' and inserting ''Senate, or the Deputy Director of the Federal Bureau of Investigation, if designated by the President as a certifying official—''; and

(2) in subsection (d)(1)(A), by striking ''or the Director of National Intelligence'' and inserting ''the Director of National Intelligence, or the Director of the Central Intelligence Agency''.

(b) ORDERS.—Section 304 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1824) is amended—

(1) in subsection (a)—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively; and

(2) by amending subsection (e) to read as follows:

''(e)(1) Notwithstanding any other provision of this title, the Attorney General may authorize the emergency employment of a physical search if the Attorney General reasonably—

''(A) determines that an emergency situation exists with respect to the employment of a physical search to obtain foreign intelligence information before an order authorizing such physical search can with due diligence be obtained;

''(B) determines that the factual basis for issuance of an order under this title to approve such physical search exists;

''(C) informs, either personally or through a designee, a judge of the Foreign Intelligence Surveillance Court at the time of such authorization that the decision has been made to employ an emergency physical search; and

''(D) makes an application in accordance with this title to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 168 hours after the Attorney General authorizes such physical search.

''(2) If the Attorney General authorizes the emergency employment of a physical search under paragraph (1), the Attorney General shall require that the minimization procedures required by this title for the issuance of a judicial order be followed.

''(3) In the absence of a judicial order approving such physical search, the physical search shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 168 hours from the time of authorization by the Attorney General, whichever is earliest.

''(4) A denial of the application made under this subsection may be reviewed as provided in section 103.

''(5)(A) In the event that such application for approval is denied, or in any other case where the physical search is terminated and no order is issued approving the physical search, no information obtained or evidence derived from such physical search shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such physical search shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

''(B) The Attorney General shall assess compliance with the requirements of subparagraph (A).''.

(c) CONFORMING AMENDMENTS.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

(1) in section 304(a)(4), as redesignated by subsection (b) of this section, by striking ''303(a)(7)(E)'' and inserting ''303(a)(6)(E)''; and

(2) in section 305(k)(2), by striking ''303(a)(7)'' and inserting ''303(a)(6)''.

SEC. 108. AMENDMENTS FOR EMERGENCY PEN REGISTERS AND TRAP AND TRACE DEVICES.

Section 403 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1843) is amended—

(1) in subsection (a)(2), by striking ''48 hours'' and inserting ''168 hours''; and

(2) in subsection (c)(1)(C), by striking ''48 hours'' and inserting ''168 hours''.

SEC. 109. FOREIGN INTELLIGENCE SURVEILLANCE COURT.

(a) DESIGNATION OF JUDGES.—Subsection (a) of section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) is amended by inserting ''at least'' before ''seven of the United States judicial circuits''.

(b) EN BANC AUTHORITY.—

(1) IN GENERAL.—Subsection (a) of section 103 of the Foreign Intelligence Surveillance Act of 1978, as amended by subsection (a) of this section, is further amended—

(A) by inserting ''(1)'' after ''(a)''; and

(B) by adding at the end the following new paragraph:

''(2)(A) The court established under this subsection may, on its own initiative, or upon the request of the Government in any proceeding or a party under section 501(f) or paragraph (4) or (5) of section 703(h), hold a hearing or rehearing, en banc, when ordered by a majority of the judges that constitute such court upon a determination that—

''(i) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or

''(ii) the proceeding involves a question of exceptional importance.

''(B) Any authority granted by this Act to a judge of the court established under this subsection may be exercised by the court en banc. When exercising such authority, the court en banc shall comply with any requirements of this Act on the exercise of such authority.

''(C) For purposes of this paragraph, the court en banc shall consist of all judges who constitute the court established under this subsection.''.

(2) CONFORMING AMENDMENTS.—The Foreign Intelligence Surveillance Act of 1978 is further amended—

(A) in subsection (a) of section 103, as amended by this subsection, by inserting ''(except when sitting en banc under paragraph (2))'' after ''no judge designated under this subsection''; and

(B) in section 302(c) (50 U.S.C. 1822(c)), by inserting ''(except when sitting en banc)'' after ''except that no judge''.

(c) STAY OR MODIFICATION DURING AN APPEAL.—Section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) is amended—

(1) by redesignating subsection (f) as subsection (g); and

(2) by inserting after subsection (e) the following new subsection:

''(f)(1) A judge of the court established under subsection (a), the court established under subsection (b) or a judge of that court, or the Supreme Court of the United States or a justice of that court, may, in accordance with the rules of their respective courts, enter a stay of an order or an order modifying an order of the court established under subsection (a) or the court established under subsection (b) entered under any title of this Act, while the court established under subsection (a) conducts a rehearing, while an appeal is pending to the court established under subsection (b), or while a petition of certiorari is pending in the Supreme Court of

the United States, or during the pendency of any review by that court.

''(2) The authority described in paragraph (1) shall apply to an order entered under any provision of this Act.''.

SEC. 110. TECHNICAL AND CONFORMING AMENDMENTS.

Section 103(e) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(e)) is amended—

(1) in paragraph (1), by striking ''105B(h) or 501(f)(1)'' and inserting ''501(f)(1) or 703''; and

(2) in paragraph (2), by striking ''105B(h) or 501(f)(1)'' and inserting ''501(f)(1) or 703''.

SA 3935. Mr. ROCKEFELLER submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) 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 title I and insert the following:

TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

SEC. 101. ADDITIONAL PROCEDURES REGARDING CERTAIN PERSONS OUTSIDE THE UNITED STATES.

(a) IN GENERAL.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

(1) by striking title VII; and

(2) by adding after title VI the following new title:

''TITLE VII—ADDITIONAL PROCEDURES REGARDING CERTAIN PERSONS OUTSIDE THE UNITED STATES

''SEC. 701. LIMITATION ON DEFINITION OF ELECTRONIC SURVEILLANCE.

''Nothing in the definition of electronic surveillance under section 101(f) shall be construed to encompass surveillance that is targeted in accordance with this title at a person reasonably believed to be located outside the United States.

''SEC. 702. DEFINITIONS.

''(a) IN GENERAL.—The terms 'agent of a foreign power', 'Attorney General', 'contents', 'electronic surveillance', 'foreign intelligence information', 'foreign power', 'minimization procedures', 'person', 'United States', and 'United States person' shall have the meanings given such terms in section 101, except as specifically provided in this title.

''(b) ADDITIONAL DEFINITIONS.—

''(1) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term 'congressional intelligence committees' means—

''(A) the Select Committee on Intelligence of the Senate; and

''(B) the Permanent Select Committee on Intelligence of the House of Representatives.

''(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT; COURT.—The terms 'Foreign Intelligence Surveillance Court' and 'Court' mean the court established by section 103(a).

''(3) FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW; COURT OF REVIEW.—The terms 'Foreign Intelligence Surveillance Court of Review' and 'Court of Review' mean the court established by section 103(b).

''(4) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term 'electronic communication service provider' means—

''(A) a telecommunications carrier, as that term is defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153);

''(B) a provider of electronic communication service, as that term is defined in section 2510 of title 18, United States Code;

''(C) a provider of a remote computing service, as that term is defined in section 2711 of title 18, United States Code;

''(D) any other communication service provider who has access to wire or electronic communications either as such communications are transmitted or as such communications are stored; or

''(E) an officer, employee, or agent of an entity described in subparagraph (A), (B), (C), or (D).

''(5) ELEMENT OF THE INTELLIGENCE COMMUNITY.—The term 'element of the intelligence community' means an element of the intelligence community specified in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

''SEC. 703. PROCEDURES FOR TARGETING CERTAIN PERSONS OUTSIDE THE UNITED STATES OTHER THAN UNITED STATES PERSONS.

''(a) AUTHORIZATION.—Notwithstanding any other law, the Attorney General and the Director of National Intelligence may authorize jointly, for periods of up to 1 year, the targeting of persons reasonably believed to be located outside the United States to acquire foreign intelligence information.

''(b) LIMITATIONS.—An acquisition authorized under subsection (a)—

''(1) may not intentionally target any person known at the time of acquisition to be located in the United States;

''(2) may not intentionally target a person reasonably believed to be located outside the United States if the purpose of such acquisition is to target a particular, known person reasonably believed to be in the United States, except in accordance with title I or title III;

''(3) may not intentionally target a United States person reasonably believed to be located outside the United States, except in accordance with sections 704, 705, or 706; and

''(4) shall be conducted in a manner consistent with the fourth amendment to the Constitution of the United States.

''(c) 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 (f); and

''(2) the targeting and minimization procedures required pursuant to subsections (d) and (e).

''(d) 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.

''(2) JUDICIAL REVIEW.—The procedures referred to in paragraph (1) shall be subject to judicial review pursuant to subsection (h).

''(e) 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) or section 301(4), minimization procedures for acquisitions authorized under subsection (a).

''(2) JUDICIAL REVIEW.—The minimization procedures required by this subsection shall be subject to judicial review pursuant to subsection (h).

''(f) 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 that such procedures have been approved by, or will be submitted in not more than 5 days for approval by, the Foreign Intelligence Surveillance Court pursuant to subsection (h);

''(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;

''(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) or section 301(4); and

''(II) have been approved by, or will be submitted in not more than 5 days for approval by, the Foreign Intelligence Surveillance Court pursuant to subsection (h);

''(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 (h).

''(g) DIRECTIVES AND JUDICIAL REVIEW OF 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, which shall have jurisdiction to review such a petition.

''(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.

''(E) 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.

''(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, which shall have jurisdiction to review such a petition.

''(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.

''(h) JUDICIAL REVIEW OF CERTIFICATIONS AND PROCEDURES.—

''(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 (c) and the targeting and minimization procedures adopted pursuant to subsections (d) and (e).

''(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 (f) to determine whether the certification contains all the required elements.

''(3) TARGETING PROCEDURES.—The Court shall review the targeting procedures required by subsection (d) 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.

''(4) MINIMIZATION PROCEDURES.—The Court shall review the minimization procedures required by subsection (e) to assess whether such procedures meet the definition of minimization procedures under section 101(h) or section 301(4).

''(5) ORDERS.—

''(A) APPROVAL.—If the Court finds that a certification required by subsection (f) contains all of the required elements and that the targeting and minimization procedures required by subsections (d) and (e) are consistent with the requirements of those subsections and with the fourth amendment to the Constitution of the United States, the Court shall enter an order approving the continued use of the procedures for the acquisition authorized under subsection (a).

''(B) CORRECTION OF DEFICIENCIES.—If the Court finds that a certification required by subsection (f) does not contain all of the required elements, or that the procedures required by subsections (d) and (e) are not consistent with the requirements of those subsections or the fourth amendment to the Constitution of the United States, the Court shall issue an order directing the Government to, at the Government's election and to the extent required by the Court's order—

''(i) correct any deficiency identified by the Court's order not later than 30 days after the date the Court issues the order; or

''(ii) cease the acquisition authorized under subsection (a).

''(C) REQUIREMENT FOR WRITTEN STATEMENT.—In support of its orders under this subsection, the Court shall provide, simultaneously with the orders, for the record a written statement of its reasons.

''(6) APPEAL.—

''(A) APPEAL TO THE COURT OF REVIEW.—The Government may appeal any order under this section to the Foreign Intelligence Surveillance Court of Review, which shall have jurisdiction to review such order. For any decision affirming, reversing, or modifying an order of the Foreign Intelligence Surveillance Court, the Court of Review shall provide for the record a written statement of its reasons.

''(B) CONTINUATION OF ACQUISITION PENDING REHEARING OR APPEAL.—Any acquisitions affected by an order under paragraph (5)(B) may continue—

''(i) during the pendency of any rehearing of the order by the Court en banc; and

''(ii) or, if the Government appeals an order under this section, until the Court of Review enters an order under subparagraph (C).

''(C) IMPLEMENTATION PENDING APPEAL.—No later than 30 days after an appeal to it of an order under paragraph (5)(B) directing the correction of a deficiency, the Court of Review shall determine, and enter a corresponding order, whether all or any part of the correction order, as issued or modified, shall be implemented during the pendency of the appeal.

''(D) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a writ of certiorari for review of a 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) EXPEDITED JUDICIAL PROCEEDINGS.—Judicial proceedings under this section shall be conducted as expeditiously as possible.

''(j) MAINTENANCE AND SECURITY OF RECORDS AND PROCEEDINGS.—

''(1) STANDARDS.—A record of a proceeding under this section, including petitions filed, orders granted, and statements of reasons for decision, shall be maintained under security measures adopted by the Chief Justice of the United States, in consultation with the Attorney General and the Director of National Intelligence.

''(2) FILING AND REVIEW.—All petitions under this section shall be filed under seal. In any proceedings under this section, the court shall, upon request of the Government, review ex parte and in camera any Government submission, or portions of a submission, which may include classified information.

''(3) RETENTION OF RECORDS.—A directive made or an order granted under this section shall be retained for a period of not less than 10 years from the date on which such directive or such order is made.

''(k) ASSESSMENTS AND REVIEWS.—

''(1) SEMIANNUAL ASSESSMENT.—Not less frequently than once every 6 months, the Attorney General and Director of National Intelligence shall assess compliance with the targeting and minimization procedures required by subsections (e) and (f) and shall submit each such assessment to—

''(A) the Foreign Intelligence Surveillance Court; and

''(B) the congressional intelligence committees.

''(2) AGENCY ASSESSMENT.—The Inspectors General of the Department of Justice and of any element of the intelligence community authorized to acquire foreign intelligence information under subsection (a) with respect to their department, agency, or element—

''(A) are authorized to review the compliance with the targeting and minimization procedures required by subsections (d) and (e);

''(B) with respect to acquisitions authorized under subsection (a), shall review the number of disseminated intelligence reports containing a reference to a United States person identity and the number of United States person identities subsequently disseminated by the element concerned in response to requests for identities that were not referred to by name or title in the original reporting;

''(C) with respect to acquisitions authorized under subsection (a), shall review the number of targets that were later determined to be located in the United States and, to the extent possible, whether their communications were reviewed; and

''(D) shall provide each such review to—

''(i) the Attorney General;

''(ii) the Director of National Intelligence; and

''(iii) the congressional intelligence committees.

''(3) ANNUAL REVIEW.—

''(A) REQUIREMENT TO CONDUCT.—The head of an element of the intelligence community conducting an acquisition authorized under subsection (a) shall direct the element to conduct an annual review to determine whether there is reason to believe that foreign intelligence information has been or will be obtained from the acquisition. The annual review shall provide, with respect to such acquisitions authorized under subsection (a)—

''(i) an accounting of the number of disseminated intelligence reports containing a reference to a United States person identity;

''(ii) an accounting of the number of United States person identities subsequently disseminated by that element in response to requests for identities that were not referred to by name or title in the original reporting;

''(iii) the number of targets that were later determined to be located in the United States and, to the extent possible, whether their communications were reviewed; and

''(iv) a description of any procedures developed by the head of an element of the intelligence community and approved by the Director of National Intelligence to assess, in a manner consistent with national security, operational requirements and the privacy interests of United States persons, the extent to which the acquisitions authorized under subsection (a) acquire the communications of United States persons, as well as the results of any such assessment.

''(B) USE OF REVIEW.—The head of each element of the intelligence community that conducts an annual review under subparagraph (A) shall use each such review to evaluate the adequacy of the minimization procedures utilized by such element or the application of the minimization procedures to a particular acquisition authorized under subsection (a).

''(C) PROVISION OF REVIEW.—The head of each element of the intelligence community that conducts an annual review under subparagraph (A) shall provide such review to—

''(i) the Foreign Intelligence Surveillance Court;

''(ii) the Attorney General;

''(iii) the Director of National Intelligence; and

''(iv) the congressional intelligence committees.

''SEC. 704. CERTAIN ACQUISITIONS INSIDE THE UNITED STATES OF UNITED STATES PERSONS OUTSIDE THE UNITED STATES.

''(a) JURISDICTION OF THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.—

''(1) IN GENERAL.—The Foreign Intelligence Surveillance Court shall have jurisdiction to enter an order approving the targeting of a United States person reasonably believed to be located outside the United States to acquire foreign intelligence information, if such acquisition constitutes electronic surveillance (as defined in section 101(f), regardless of the limitation of section 701) or the acquisition of stored electronic communications or stored electronic data that requires an order under this Act, and such acquisition is conducted within the United States.

''(2) LIMITATION.—In the event that a United States person targeted under this subsection is reasonably believed to be located in the United States during the pendency of an order issued pursuant to subsection (c), such acquisition shall cease until authority, other than under this section, is obtained pursuant to this Act or the targeted United States person is again reasonably believed to be located outside the United States during the pendency of an order issued pursuant to subsection (c).

''(b) APPLICATION.—

''(1) IN GENERAL.—Each application for an order under this section shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under subsection (a)(1). Each application shall require the approval of the Attorney General based upon the Attorney General's finding that it satisfies the criteria and requirements of such application, as set forth in this section, and shall include—

''(A) the identity of the Federal officer making the application;

''(B) the identity, if known, or a description of the United States person who is the target of the acquisition;

''(C) a statement of the facts and circumstances relied upon to justify the applicant's belief that the United States person who is the target of the acquisition is—

''(i) a person reasonably believed to be located outside the United States; and

''(ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

''(D) a statement of the proposed minimization procedures consistent with the requirements of section 101(h) or section 301(4);

''(E) a description of the nature of the information sought and the type of communications or activities to be subjected to acquisition;

''(F) a certification made by the Attorney General or an official specified in section 104(a)(6) that—

''(i) the certifying official deems the information sought to be foreign intelligence information;

''(ii) a significant purpose of the acquisition is to obtain foreign intelligence information;

''(iii) such information cannot reasonably be obtained by normal investigative techniques;

''(iv) designates the type of foreign intelligence information being sought according to the categories described in section 101(e); and

''(v) includes a statement of the basis for the certification that—

''(I) the information sought is the type of foreign intelligence information designated; and

''(II) such information cannot reasonably be obtained by normal investigative techniques;

''(G) a summary statement of the means by which the acquisition will be conducted and whether physical entry is required to effect the acquisition;

''(H) the identity of any electronic communication service provider necessary to effect the acquisition, provided, however, that the application is not required to identify the specific facilities, places, premises, or property at which the acquisition authorized under this section will be directed or conducted;

''(I) a statement of the facts concerning any previous applications that have been made to any judge of the Foreign Intelligence Surveillance Court involving the United States person specified in the application and the action taken on each previous application; and

''(J) a statement of the period of time for which the acquisition is required to be maintained, provided that such period of time shall not exceed 90 days per application.

''(2) OTHER REQUIREMENTS OF THE ATTORNEY GENERAL.—The Attorney General may require any other affidavit or certification from any other officer in connection with the application.

''(3) OTHER REQUIREMENTS OF THE JUDGE.—The judge may require the applicant to furnish such other information as may be necessary to make the findings required by subsection (c)(1).

''(c) ORDER.—

''(1) FINDINGS.—Upon an application made pursuant to subsection (b), the Foreign Intelligence Surveillance Court shall enter an ex parte order as requested or as modified approving the acquisition if the Court finds that—

''(A) the application has been made by a Federal officer and approved by the Attorney General;

''(B) on the basis of the facts submitted by the applicant, for the United States person who is the target of the acquisition, there is probable cause to believe that the target is—

''(i) a person reasonably believed to be located outside the United States; and

''(ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

''(C) the proposed minimization procedures meet the definition of minimization procedures under section 101(h) or section 301(4); and

''(D) the application which has been filed contains all statements and certifications required by subsection (b) and the certification or certifications are not clearly erroneous on the basis of the statement made under subsection (b)(1)(F)(v) and any other information furnished under subsection (b)(3).

''(2) PROBABLE CAUSE.—In determining whether or not probable cause exists for purposes of an order under paragraph (1), a judge having jurisdiction under subsection (a)(1) may consider past activities of the target, as well as facts and circumstances relating to current or future activities of the target. However, no United States person may be considered a foreign power, agent of a foreign power, or officer or employee of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

''(3) REVIEW.—

''(A) LIMITATION ON REVIEW.—Review by a judge having jurisdiction under subsection (a)(1) shall be limited to that required to make the findings described in paragraph (1).

''(B) REVIEW OF PROBABLE CAUSE.—If the judge determines that the facts submitted under subsection (b) are insufficient to establish probable cause to issue an order under paragraph (1), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (f).

''(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the proposed minimization procedures required

under paragraph (1)(C) do not meet the definition of minimization procedures under section 101(h) or section 301(4), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (f).

''(D) REVIEW OF CERTIFICATION.—If the judge determines that an application required by subsection (2) does not contain all of the required elements, or that the certification or certifications are clearly erroneous on the basis of the statement made under subsection (b)(1)(F)(v) and any other information furnished under subsection (b)(3), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (f).

''(4) SPECIFICATIONS.—An order approving an acquisition under this subsection shall specify—

''(A) the identity, if known, or a description of the United States person who is the target of the acquisition identified or described in the application pursuant to subsection (b)(1)(B);

''(B) if provided in the application pursuant to subsection (b)(1)(H), the nature and location of each of the facilities or places at which the acquisition will be directed;

''(C) the nature of the information sought to be acquired and the type of communications or activities to be subjected to acquisition;

''(D) the means by which the acquisition will be conducted and whether physical entry is required to effect the acquisition; and

''(E) the period of time during which the acquisition is approved.

''(5) DIRECTIONS.—An order approving acquisitions under this subsection shall direct—

''(A) that the minimization procedures be followed;

''(B) an electronic communication service provider to provide to the Government forthwith all information, facilities, or assistance necessary to accomplish the acquisition authorized under this subsection 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;

''(C) an electronic communication service provider to maintain under security procedures approved by the Attorney General any records concerning the acquisition or the aid furnished that such electronic communication service provider wishes to maintain; and

''(D) that the Government compensate, at the prevailing rate, such electronic communication service provider for providing such information, facilities, or assistance.

''(6) DURATION.—An order approved under this paragraph shall be effective for a period not to exceed 90 days and such order may be renewed for additional 90-day periods upon submission of renewal applications meeting the requirements of subsection (b).

''(7) COMPLIANCE.—At or prior to the end of the period of time for which an acquisition is approved by an order or extension under this section, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.

''(d) EMERGENCY AUTHORIZATION.—

''(1) AUTHORITY FOR EMERGENCY AUTHORIZATION.—Notwithstanding any other provision of this Act, if the Attorney General reasonably determines that—

''(A) an emergency situation exists with respect to the acquisition of foreign intelligence information for which an order may be obtained under subsection (c) before an order authorizing such acquisition can with due diligence be obtained; and

''(B) the factual basis for issuance of an order under this subsection to approve such acquisition exists,

the Attorney General may authorize the emergency acquisition if a judge having jurisdiction under subsection (a)(1) is informed by the Attorney General, or a designee of the Attorney General, at the time of such authorization that the decision has been made to conduct such acquisition and if an application in accordance with this subsection is made to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 168 hours after the Attorney General authorizes such acquisition.

''(2) MINIMIZATION PROCEDURES.—If the Attorney General authorizes such emergency acquisition, the Attorney General shall require that the minimization procedures required by this subsection for the issuance of a judicial order be followed.

''(3) TERMINATION OF EMERGENCY AUTHORIZATION.—In the absence of a judicial order approving such acquisition, the acquisition shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 168 hours from the time of authorization by the Attorney General, whichever is earliest.

''(4) USE OF INFORMATION.—In the event that such application for approval is denied, or in any other case where the acquisition is terminated and no order is issued approving the acquisition, no information obtained or evidence derived from such acquisition, except under circumstances in which the target of the acquisition is determined not to be a United States person during the pendency of the 168-hour emergency acquisition period, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

''(e) 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 an order or request for emergency assistance issued pursuant to subsections (c) or (d).

''(f) APPEAL.—

''(1) APPEAL TO THE FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW.—The Government may file an appeal with the Foreign Intelligence Surveillance Court of Review for review of an order issued pursuant to subsection (c). The Court of Review shall have jurisdiction to consider such appeal and shall provide a written statement for the record of the reasons for a decision under this paragraph.

''(2) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a writ of certiorari for review of the decision of the Court of Review issued under paragraph (1). 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.

''SEC. 705. OTHER ACQUISITIONS TARGETING UNITED STATES PERSONS OUTSIDE THE UNITED STATES.

''(a) JURISDICTION AND SCOPE.—

''(1) JURISDICTION.—The Foreign Intelligence Surveillance Court shall have jurisdiction to enter an order pursuant to subsection (c).

''(2) SCOPE.—No element of the intelligence community may intentionally target, for the purpose of acquiring foreign intelligence information, a United States person reasonably believed to be located outside the United States under circumstances in which the targeted United States person has a reasonable expectation of privacy and a warrant would be required if the acquisition were conducted inside the United States for law enforcement purposes, unless a judge of the Foreign Intelligence Surveillance Court has entered an order or the Attorney General has authorized an emergency acquisition pursuant to subsections (c) or (d) or any other provision of this Act.

''(3) LIMITATIONS.—

''(A) MOVING OR MISIDENTIFIED TARGETS.—In the event that the targeted United States person is reasonably believed to be in the United States during the pendency of an order issued pursuant to subsection (c), such acquisition shall cease until authority is obtained pursuant to this Act or the targeted United States person is again reasonably believed to be located outside the United States during the pendency of an order issued pursuant to subsection (c).

''(B) APPLICABILITY.—If the acquisition is to be conducted inside the United States and could be authorized under section 704, the procedures of section 704 shall apply, unless an order or emergency acquisition authority has been obtained under a provision of this Act other than under this section.

''(b) APPLICATION.—Each application for an order under this section shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under subsection (a)(1). Each application shall require the approval of the Attorney General based upon the Attorney General's finding that it satisfies the criteria and requirements of such application as set forth in this section and shall include—

''(1) the identity, if known, or a description of the specific United States person who is the target of the acquisition;

''(2) a statement of the facts and circumstances relied upon to justify the applicant's belief that the United States person who is the target of the acquisition is—

''(A) a person reasonably believed to be located outside the United States; and

''(B) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

''(3) a statement of the proposed minimization procedures consistent with the requirements of section 101(h) or section 301(4);

''(4) a certification made by the Attorney General, an official specified in section 104(a)(6), or the head of an element of the intelligence community that—

''(A) the certifying official deems the information sought to be foreign intelligence information; and

''(B) a significant purpose of the acquisition is to obtain foreign intelligence information;

''(5) a statement of the facts concerning any previous applications that have been made to any judge of the Foreign Intelligence Surveillance Court involving the United States person specified in the application and the action taken on each previous application; and

''(6) a statement of the period of time for which the acquisition is required to be maintained, provided that such period of time shall not exceed 90 days per application.

''(c) ORDER.—

''(1) FINDINGS.—If, upon an application made pursuant to subsection (b), a judge having jurisdiction under subsection (a) finds that—

''(A) on the basis of the facts submitted by the applicant, for the United States person who is the target of the acquisition, there is probable cause to believe that the target is—

''(i) a person reasonably believed to be located outside the United States; and

''(ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

''(B) the proposed minimization procedures, with respect to their dissemination provisions, meet the definition of minimization procedures under section 101(h) or section 301(4); and

''(C) the application which has been filed contains all statements and certifications required by subsection (b) and the certification provided under subsection (b)(4) is not clearly erroneous on the basis of the information furnished under subsection (b),

the Court shall issue an ex parte order so stating.

''(2) PROBABLE CAUSE.—In determining whether or not probable cause exists for purposes of an order under paragraph (1)(A), a judge having jurisdiction under subsection (a)(1) may consider past activities of the target, as well as facts and circumstances relating to current or future activities of the target. However, no United States person may be considered a foreign power, agent of a foreign power, or officer or employee of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

''(3) REVIEW.—

''(A) LIMITATIONS ON REVIEW.—Review by a judge having jurisdiction under subsection (a)(1) shall be limited to that required to make the findings described in paragraph (1). The judge shall not have jurisdiction to review the means by which an acquisition under this section may be conducted.

''(B) REVIEW OF PROBABLE CAUSE.—If the judge determines that the facts submitted under subsection (b) are insufficient to establish probable cause to issue an order under this subsection, the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (e).

''(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the minimization procedures applicable to dissemination of information obtained through an acquisition under this subsection do not meet the definition of minimization procedures under section 101(h) or section 301(4), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (e).

''(D) SCOPE OF REVIEW OF CERTIFICATION.—If the judge determines that the certification provided under subsection (b)(4) is clearly erroneous on the basis of the information furnished under subsection (b), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (e).

''(4) DURATION.—An order under this paragraph shall be effective for a period not to exceed 90 days and such order may be renewed for additional 90-day periods upon submission of renewal applications meeting the requirements of subsection (b).

''(5) COMPLIANCE.—At or prior to the end of the period of time for which an order or extension is granted under this section, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was disseminated, provided that the judge may not inquire into the circumstances relating to the conduct of the acquisition.

''(d) EMERGENCY AUTHORIZATION.—

''(1) AUTHORITY FOR EMERGENCY AUTHORIZATION.—Notwithstanding any other provision in this subsection, if the Attorney General reasonably determines that—

''(A) an emergency situation exists with respect to the acquisition of foreign intelligence information for which an order may be obtained under subsection (c) before an order under that subsection may, with due diligence, be obtained; and

''(B) the factual basis for issuance of an order under this section exists,

the Attorney General may authorize the emergency acquisition if a judge having jurisdiction under subsection (a)(1) is informed by the Attorney General or a designee of the Attorney General at the time of such authorization that the decision has been made to conduct such acquisition and if an application in accordance with this subsection is made to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 168 hours after the Attorney General authorizes such acquisition.

''(2) MINIMIZATION PROCEDURES.—If the Attorney General authorizes such emergency acquisition, the Attorney General shall require that the minimization procedures required by this subsection be followed.

''(3) TERMINATION OF EMERGENCY AUTHORIZATION.—In the absence of an order under subsection (c), the acquisition shall terminate when the information sought is obtained, if the application for the order is denied, or after the expiration of 168 hours from the time of authorization by the Attorney General, whichever is earliest.

''(4) USE OF INFORMATION.—In the event that such application is denied, or in any other case where the acquisition is terminated and no order is issued approving the acquisition, no information obtained or evidence derived from such acquisition, except under circumstances in which the target of the acquisition is determined not to be a United States person during the pendency of the 168-hour emergency acquisition period, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

''(e) APPEAL.—

''(1) APPEAL TO THE COURT OF REVIEW.—The Government may file an appeal with the Foreign Intelligence Surveillance Court of Review for review of an order issued pursuant to subsection (c). The Court of Review shall have jurisdiction to consider such appeal and shall provide a written statement for the record of the reasons for a decision under this paragraph.

''(2) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a writ of certiorari for review of the decision of the Court of Review issued under paragraph (1). 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.

''SEC. 706. JOINT APPLICATIONS AND CONCURRENT AUTHORIZATIONS.

''(a) JOINT APPLICATIONS AND ORDERS.—If an acquisition targeting a United States person under section 704 or section 705 is proposed to be conducted both inside and outside the United States, a judge having jurisdiction under section 704(a)(1) or section 705(a)(1) may issue simultaneously, upon the request of the Government in a joint application complying with the requirements of section 704(b) or section 705(b), orders under section 704(b) or section 705(b), as applicable.

''(b) CONCURRENT AUTHORIZATION.—If an order authorizing electronic surveillance or physical search has been obtained under section 105 or section 304 and that order is still in effect, the Attorney General may authorize, without an order under section 704 or section 705, an acquisition of foreign intelligence information targeting that United States person while such person is reasonably believed to be located outside the United States.

''SEC. 707. USE OF INFORMATION ACQUIRED UNDER TITLE VII.

''(a) INFORMATION ACQUIRED UNDER SECTION 703.—Information acquired from an acquisition conducted under section 703 shall be deemed to be information acquired from an electronic surveillance pursuant to title I for purposes of section 106, except for the purposes of subsection (j) of such section.

''(b) INFORMATION ACQUIRED UNDER SECTION 704.—Information acquired from an acquisition conducted under section 704 shall be deemed to be information acquired from an electronic surveillance pursuant to title I for purposes of section 106.

''SEC. 708. CONGRESSIONAL OVERSIGHT.

''(a) SEMIANNUAL REPORT.—Not less frequently than once every 6 months, the Attorney General shall fully inform, in a manner consistent with national security, the congressional intelligence committees, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives, concerning the implementation of this title.

''(b) CONTENT.—Each report made under subparagraph (a) shall include—

''(1) with respect to section 703—

''(A) any certifications made under subsection 703(f) during the reporting period;

''(B) any directives issued under subsection 703(g) during the reporting period;

''(C) a description of the judicial review during the reporting period of any such certifications and targeting and minimization procedures utilized with respect to such acquisition, including a copy of any order or pleading in connection with such review that contains a significant legal interpretation of the provisions of this section;

''(D) any actions taken to challenge or enforce a directive under paragraphs (4) or (5) of section 703(g);

''(E) any compliance reviews conducted by the Department of Justice or the Office of the Director of National Intelligence of acquisitions authorized under subsection 703(a);

''(F) a description of any incidents of noncompliance with a directive issued by the Attorney General and the Director of National Intelligence under subsection 703(g), including—

''(i) incidents of noncompliance by an element of the intelligence community with procedures adopted pursuant to subsections (d) and (e) of section 703; and

''(ii) incidents of noncompliance by a specified person to whom the Attorney General and Director of National Intelligence issued a directive under subsection 703(g); and

''(G) any procedures implementing this section;

''(2) with respect to section 704—

''(A) the total number of applications made for orders under section 704(b);

''(B) the total number of such orders either granted, modified, or denied; and

''(C) the total number of emergency acquisitions authorized by the Attorney General under section 704(d) and the total number of subsequent orders approving or denying such acquisitions; and

''(3) with respect to section 705—

''(A) the total number of applications made for orders under 705(b);

''(B) the total number of such orders either granted, modified, or denied; and

''(C) the total number of emergency acquisitions authorized by the Attorney General under subsection 705(d) and the total number of subsequent orders approving or denying such applications.''.

(b) 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—

(1) by striking the item relating to title VII;

(2) by striking the item relating to section 701; and

(3) by adding at the end the following:

''TITLE VII—ADDITIONAL PROCEDURES REGARDING CERTAIN PERSONS OUTSIDE THE UNITED STATES

''Sec. 701. Limitation on definition of electronic surveillance.

''Sec. 702. Definitions.

''Sec. 703. Procedures for targeting certain persons outside the United States other than United States persons.

''Sec. 704. Certain acquisitions inside the United States of United States persons outside the United States.

''Sec. 705. Other acquisitions targeting United States persons outside the United States.

''Sec. 706. Joint applications and concurrent authorizations.

''Sec. 707. Use of information acquired under title VII.

''Sec. 708. Congressional oversight.''.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TITLE 18, UNITED STATES CODE.—

(A) SECTION 2232.—Section 2232(e) of title 18, United States Code, is amended by inserting ''(as defined in section 101(f) of the Foreign Intelligence Surveillance Act of 1978, regardless of the limitation of section 701 of that Act)'' after ''electronic surveillance''.

(B) SECTION 2511.—Section 2511(2)(a)(ii)(A) of title 18, United States Code, is amended by inserting ''or a court order pursuant to section 705 of the Foreign Intelligence Surveillance Act of 1978'' after ''assistance''.

(2) FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.—

(A) SECTION 109.—Section 109 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1809) is amended 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.''.

(B) SECTION 110.—Section 110 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1810) is amended by—

(i) adding an ''(a)'' before ''CIVIL ACTION'',

(ii) redesignating subsections (a) through (c) as paragraphs (1) through (3), respectively; and

(iii) adding at the end the following:

''(b) 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) SECTION 601.—Section 601(a)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1871(a)(1)) is amended by striking subparagraphs (C) and (D) and inserting the following:

''(C) pen registers under section 402;

''(D) access to records under section 501;

''(E) acquisitions under section 704; and

''(F) acquisitions under section 705;''.

(d) TERMINATION OF AUTHORITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsections (a)(2), (b), and (c) shall cease to have effect on December 31, 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

(2) CONTINUING APPLICABILITY.—Section 703(g)(3) of the Foreign Intelligence Surveillance Act of 1978 (as amended by subsection (a)) shall remain in effect with respect to any directive issued pursuant to section 703(g) of that Act (as so amended) during the period such directive was in effect. Section 704(e) of the Foreign Intelligence Surveillance Act of 1978 (as amended by subsection (a)) shall remain in effect with respect to an order or request for emergency assistance under that section. The use of information acquired by an acquisition conducted under section 703 of that Act (as so amended) shall continue to be governed by the provisions of section 707 of that Act (as so amended).

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(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1809(a)) is amended 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''.

(c) CONFORMING AMENDMENTS.—

(1) TITLE 18, UNITED STATES CODE.—Section 2511(2)(a) of title 18, United States Code, is amended 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.''.

(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.''.

SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN COURT ORDERS UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

(a) INCLUSION OF CERTAIN ORDERS IN SEMI-ANNUAL REPORTS OF ATTORNEY GENERAL.—Subsection (a)(5) of section 601 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1871) is amended by striking ''(not including orders)'' and inserting '', orders,''.

(b) REPORTS BY ATTORNEY GENERAL ON CERTAIN OTHER ORDERS.—Such section 601 is further amended by adding at the end the following new subsection:

''(c) SUBMISSIONS TO CONGRESS.—The Attorney General shall submit to the committees of Congress referred to in subsection (a)—

''(1) a copy of any decision, order, or opinion issued by the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review that includes significant construction or interpretation of any provision of this Act, and any pleadings associated with such decision, order, or opinion, not later than 45 days after such decision, order, or opinion is issued; and

''(2) a copy of any such decision, order, or opinion, and the pleadings associated with such decision, order, or opinion, that was issued during the 5-year period ending on the date of the enactment of the FISA Amendments Act of 2008 and not previously submitted in a report under subsection (a).''.

(c) DEFINITIONS.—Such section 601, as amended by subsections (a) and (b), is further amended by adding at the end the following:

''(d) DEFINITIONS.—In this section:

''(1) FOREIGN INTELLIGENCE SURVEILLANCE COURT; COURT.—The term '''Foreign Intelligence Surveillance Court''' means the court established by section 103(a).

''(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW; COURT OF REVIEW.—The term 'Foreign Intelligence Surveillance Court of Review' means the court established by section 103(b).''.

SEC. 104. APPLICATIONS FOR COURT ORDERS.

Section 104 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804) is amended—

(1) in subsection (a)—

(A) by striking paragraphs (2) and (11);

(B) by redesignating paragraphs (3) through (10) as paragraphs (2) through (9), respectively;

(C) in paragraph (5), as redesignated by subparagraph (B) of this paragraph, by striking ''detailed'';

(D) in paragraph (6), as redesignated by subparagraph (B) of this paragraph, in the matter preceding subparagraph (A)—

(i) by striking ''Affairs or'' and inserting ''Affairs,''; and

(ii) by striking ''Senate—'' and inserting ''Senate, or the Deputy Director of the Federal Bureau of Investigation, if designated by the President as a certifying official—'';

(E) in paragraph (7), as redesignated by subparagraph (B) of this paragraph, by striking ''statement of'' and inserting ''summary statement of'';

(F) in paragraph (8), as redesignated by subparagraph (B) of this paragraph, by adding ''and'' at the end; and

(G) in paragraph (9), as redesignated by subparagraph (B) of this paragraph, by striking ''; and'' and inserting a period;

(2) by striking subsection (b);

(3) by redesignating subsections (c) through (e) as subsections (b) through (d), respectively; and

(4) in paragraph (1)(A) of subsection (d), as redesignated by paragraph (3) of this subsection, by striking ''or the Director of National Intelligence'' and inserting ''the Director of National Intelligence, or the Director of the Central Intelligence Agency''.

SEC. 105. ISSUANCE OF AN ORDER.

Section 105 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805) is amended—

(1) in subsection (a)—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively;

(2) in subsection (b), by striking ''(a)(3)'' and inserting ''(a)(2)'';

(3) in subsection (c)(1)—

(A) in subparagraph (D), by adding ''and'' at the end;

(B) in subparagraph (E), by striking ''; and'' and inserting a period; and

(C) by striking subparagraph (F);

(4) by striking subsection (d);

(5) by redesignating subsections (e) through (i) as subsections (d) through (h), respectively;

(6) by amending subsection (e), as redesignated by paragraph (5) of this section, to read as follows:

''(e)(1) Notwithstanding any other provision of this title, the Attorney General may authorize the emergency employment of electronic surveillance if the Attorney General reasonably—

''(A) determines that an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained;

''(B) determines that the factual basis for issuance of an order under this title to approve such electronic surveillance exists;

''(C) informs, either personally or through a designee, a judge having jurisdiction under section 103 at the time of such authorization that the decision has been made to employ emergency electronic surveillance; and

''(D) makes an application in accordance with this title to a judge having jurisdiction under section 103 as soon as practicable, but not later than 168 hours after the Attorney General authorizes such surveillance.

''(2) If the Attorney General authorizes the emergency employment of electronic surveillance under paragraph (1), the Attorney General shall require that the minimization procedures required by this title for the issuance of a judicial order be followed.

''(3) In the absence of a judicial order approving such electronic surveillance, the surveillance shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 168 hours from the time of authorization by the Attorney General, whichever is earliest.

''(4) A denial of the application made under this subsection may be reviewed as provided in section 103.

''(5) In the event that such application for approval is denied, or in any other case where the electronic surveillance is terminated and no order is issued approving the surveillance, no information obtained or evidence derived from such surveillance shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such surveillance shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

''(6) The Attorney General shall assess compliance with the requirements of paragraph (5).''; and

(7) by adding at the end the following:

''(i) In any case in which the Government makes an application to a judge under this title to conduct electronic surveillance involving communications and the judge grants such application, upon the request of the applicant, the judge shall also authorize the installation and use of pen registers and trap and trace devices, and direct the disclosure of the information set forth in section 402(d)(2).''.

SEC. 106. USE OF INFORMATION.

Subsection (i) of section 106 of the Foreign Intelligence Surveillance Act of 1978 (8 U.S.C. 1806) is amended by striking ''radio communication'' and inserting ''communication''.

SEC. 107. AMENDMENTS FOR PHYSICAL SEARCHES.

(a) APPLICATIONS.—Section 303 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1823) is amended—

(1) in subsection (a)—

(A) by striking paragraph (2);

(B) by redesignating paragraphs (3) through (9) as paragraphs (2) through (8), respectively;

(C) in paragraph (2), as redesignated by subparagraph (B) of this paragraph, by striking ''detailed'';

(D) in paragraph (3)(C), as redesignated by subparagraph (B) of this paragraph, by inserting ''or is about to be'' before ''owned''; and

(E) in paragraph (6), as redesignated by subparagraph (B) of this paragraph, in the matter preceding subparagraph (A)—

(i) by striking ''Affairs or'' and inserting ''Affairs,''; and

(ii) by striking ''Senate—'' and inserting ''Senate, or the Deputy Director of the Federal Bureau of Investigation, if designated by the President as a certifying official—''; and

(2) in subsection (d)(1)(A), by striking ''or the Director of National Intelligence'' and inserting ''the Director of National Intelligence, or the Director of the Central Intelligence Agency''.

(b) ORDERS.—Section 304 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1824) is amended—

(1) in subsection (a)—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively; and

(2) by amending subsection (e) to read as follows:

''(e)(1) Notwithstanding any other provision of this title, the Attorney General may authorize the emergency employment of a physical search if the Attorney General reasonably—

''(A) determines that an emergency situation exists with respect to the employment of a physical search to obtain foreign intelligence information before an order authorizing such physical search can with due diligence be obtained;

''(B) determines that the factual basis for issuance of an order under this title to approve such physical search exists;

''(C) informs, either personally or through a designee, a judge of the Foreign Intelligence Surveillance Court at the time of such authorization that the decision has been made to employ an emergency physical search; and

''(D) makes an application in accordance with this title to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 168 hours after the Attorney General authorizes such physical search.

''(2) If the Attorney General authorizes the emergency employment of a physical search under paragraph (1), the Attorney General shall require that the minimization procedures required by this title for the issuance of a judicial order be followed.

''(3) In the absence of a judicial order approving such physical search, the physical search shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 168 hours from the time of authorization by the Attorney General, whichever is earliest.

''(4) A denial of the application made under this subsection may be reviewed as provided in section 103.

''(5)(A) In the event that such application for approval is denied, or in any other case where the physical search is terminated and no order is issued approving the physical search, no information obtained or evidence derived from such physical search shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such physical search shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

''(B) The Attorney General shall assess compliance with the requirements of subparagraph (A).''.

(c) CONFORMING AMENDMENTS.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

(1) in section 304(a)(4), as redesignated by subsection (b) of this section, by striking ''303(a)(7)(E)'' and inserting ''303(a)(6)(E)''; and

(2) in section 305(k)(2), by striking ''303(a)(7)'' and inserting ''303(a)(6)''.

SEC. 108. AMENDMENTS FOR EMERGENCY PEN REGISTERS AND TRAP AND TRACE DEVICES.

Section 403 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1843) is amended—

(1) in subsection (a)(2), by striking ''48 hours'' and inserting ''168 hours''; and

(2) in subsection (c)(1)(C), by striking ''48 hours'' and inserting ''168 hours''.

SEC. 109. FOREIGN INTELLIGENCE SURVEILLANCE COURT.

(a) DESIGNATION OF JUDGES.—Subsection (a) of section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) is

amended by inserting ''at least'' before ''seven of the United States judicial circuits''.

(b) EN BANC AUTHORITY.—

(1) IN GENERAL.—Subsection (a) of section 103 of the Foreign Intelligence Surveillance Act of 1978, as amended by subsection (a) of this section, is further amended—

(A) by inserting ''(1)'' after ''(a)''; and

(B) by adding at the end the following new paragraph:

''(2)(A) The court established under this subsection may, on its own initiative, or upon the request of the Government in any proceeding or a party under section 501(f) or paragraph (4) or (5) of section 703(h), hold a hearing or rehearing, en banc, when ordered by a majority of the judges that constitute such court upon a determination that—

''(i) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or

''(ii) the proceeding involves a question of exceptional importance.

''(B) Any authority granted by this Act to a judge of the court established under this subsection may be exercised by the court en banc. When exercising such authority, the court en banc shall comply with any requirements of this Act on the exercise of such authority.

''(C) For purposes of this paragraph, the court en banc shall consist of all judges who constitute the court established under this subsection.''.

(2) CONFORMING AMENDMENTS.—The Foreign Intelligence Surveillance Act of 1978 is further amended—

(A) in subsection (a) of section 103, as amended by this subsection, by inserting ''(except when sitting en banc under paragraph (2))'' after ''no judge designated under this subsection''; and

(B) in section 302(c) (50 U.S.C. 1822(c)), by inserting ''(except when sitting en banc)'' after ''except that no judge''.

(c) STAY OR MODIFICATION DURING AN APPEAL.—Section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) is amended—

(1) by redesignating subsection (f) as subsection (g); and

(2) by inserting after subsection (e) the following new subsection:

''(f)(1) A judge of the court established under subsection (a), the court established under subsection (b) or a judge of that court, or the Supreme Court of the United States or a justice of that court, may, in accordance with the rules of their respective courts, enter a stay of an order or an order modifying an order of the court established under subsection (a) or the court established under subsection (b) entered under any title of this Act, while the court established under subsection (a) conducts a rehearing, while an appeal is pending to the court established under subsection (b), or while a petition of certiorari is pending in the Supreme Court of the United States, or during the pendency of any review by that court.

''(2) The authority described in paragraph (1) shall apply to an order entered under any provision of this Act.''.

SEC. 110. TECHNICAL AND CONFORMING AMENDMENTS.

Section 103(e) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(e)) is amended—

(1) in paragraph (1), by striking ''105B(h) or 501(f)(1)'' and inserting ''501(f)(1) or 703''; and

(2) in paragraph (2), by striking ''105B(h) or 501(f)(1)'' and inserting ''501(f)(1) or 703''.

SA 3936. Mr. ROCKEFELLER submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) 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 title I and insert the following:

TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

SEC. 101. ADDITIONAL PROCEDURES REGARDING CERTAIN PERSONS OUTSIDE THE UNITED STATES.

(a) IN GENERAL.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

(1) by striking title VII; and

(2) by adding after title VI the following new title:

''TITLE VII—ADDITIONAL PROCEDURES REGARDING CERTAIN PERSONS OUTSIDE THE UNITED STATES

''SEC. 701. LIMITATION ON DEFINITION OF ELECTRONIC SURVEILLANCE.

''Nothing in the definition of electronic surveillance under section 101(f) shall be construed to encompass surveillance that is targeted in accordance with this title at a person reasonably believed to be located outside the United States.

''SEC. 702. DEFINITIONS.

''(a) IN GENERAL.—The terms 'agent of a foreign power', 'Attorney General', 'contents', 'electronic surveillance', 'foreign intelligence information', 'foreign power', 'minimization procedures', 'person', 'United States', and 'United States person' shall have the meanings given such terms in section 101, except as specifically provided in this title.

''(b) ADDITIONAL DEFINITIONS.—

''(1) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term 'congressional intelligence committees' means—

''(A) the Select Committee on Intelligence of the Senate; and

''(B) the Permanent Select Committee on Intelligence of the House of Representatives.

''(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT; COURT.—The terms 'Foreign Intelligence Surveillance Court' and 'Court' mean the court established by section 103(a).

''(3) FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW; COURT OF REVIEW.—The terms 'Foreign Intelligence Surveillance Court of Review' and 'Court of Review' mean the court established by section 103(b).

''(4) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term 'electronic communication service provider' means—

''(A) a telecommunications carrier, as that term is defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153);

''(B) a provider of electronic communication service, as that term is defined in section 2510 of title 18, United States Code;

''(C) a provider of a remote computing service, as that term is defined in section 2711 of title 18, United States Code;

''(D) any other communication service provider who has access to wire or electronic communications either as such communications are transmitted or as such communications are stored; or

''(E) an officer, employee, or agent of an entity described in subparagraph (A), (B), (C), or (D).

''(5) ELEMENT OF THE INTELLIGENCE COMMUNITY.—The term 'element of the intelligence community' means an element of the intelligence community specified in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

''SEC. 703. PROCEDURES FOR TARGETING CERTAIN PERSONS OUTSIDE THE UNITED STATES OTHER THAN UNITED STATES PERSONS.

''(a) AUTHORIZATION.—Notwithstanding any other law, the Attorney General and the Director of National Intelligence may authorize jointly, for periods of up to 1 year, the targeting of persons reasonably believed to be located outside the United States to acquire foreign intelligence information.

''(b) LIMITATIONS.—An acquisition authorized under subsection (a)—

''(1) may not intentionally target any person known at the time of acquisition to be located in the United States;

''(2) may not intentionally target a person reasonably believed to be located outside the United States if the purpose of such acquisition is to target a particular, known person reasonably believed to be in the United States, except in accordance with title I or title III;

''(3) may not intentionally target a United States person reasonably believed to be located outside the United States, except in accordance with sections 704, 705, or 706; and

''(4) shall be conducted in a manner consistent with the fourth amendment to the Constitution of the United States.

''(c) 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 (f); and

''(2) the targeting and minimization procedures required pursuant to subsections (d) and (e).

''(d) 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.

''(2) JUDICIAL REVIEW.—The procedures referred to in paragraph (1) shall be subject to judicial review pursuant to subsection (h).

''(e) 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) or section 301(4), minimization procedures for acquisitions authorized under subsection (a).

''(2) JUDICIAL REVIEW.—The minimization procedures required by this subsection shall be subject to judicial review pursuant to subsection (h).

''(f) 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 that such procedures have been approved by, or will be submitted in not more than 5 days for approval by, the Foreign Intelligence Surveillance Court pursuant to subsection (h);

''(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;

''(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) or section 301(4); and

''(II) have been approved by, or will be submitted in not more than 5 days for approval by, the Foreign Intelligence Surveillance Court pursuant to subsection (h);

''(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 (h).

''(g) DIRECTIVES AND JUDICIAL REVIEW OF 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, which shall have jurisdiction to review such a petition.

''(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.

''(E) 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.

''(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, which shall have jurisdiction to review such a petition.

''(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.

''(7) COMPLIANCE REVIEWS.—During the period that minimization procedures approved under paragraph (5)(A) are in effect, the Court may review and assess compliance with such procedures and shall have access to the assessments and reviews required by subsections (l)(1), (l)(2), and (l)(3) with respect to compliance with such procedures. In conducting a review under this paragraph, the Court may, to the extent necessary, require the Government to provide additional information regarding the acquisition, retention, or dissemination of information concerning United States persons during the course of an acquisition authorized under subsection (a). The Court may fashion remedies it determines necessary to enforce compliance.

''(h) JUDICIAL REVIEW OF CERTIFICATIONS AND PROCEDURES.—

''(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 (c) and the targeting and minimization procedures adopted pursuant to subsections (d) and (e).

''(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 (f) to determine whether the certification contains all the required elements.

''(3) TARGETING PROCEDURES.—The Court shall review the targeting procedures required by subsection (d) 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.

''(4) MINIMIZATION PROCEDURES.—The Court shall review the minimization procedures required by subsection (e) to assess whether such procedures meet the definition of minimization procedures under section 101(h) or section 301(4).

''(5) ORDERS.—

''(A) APPROVAL.—If the Court finds that a certification required by subsection (f) contains all of the required elements and that the targeting and minimization procedures required by subsections (d) and (e) are consistent with the requirements of those subsections and with the fourth amendment to the Constitution of the United States, the Court shall enter an order approving the continued use of the procedures for the acquisition authorized under subsection (a).

''(B) CORRECTION OF DEFICIENCIES.—If the Court finds that a certification required by subsection (f) does not contain all of the required elements, or that the procedures required by subsections (d) and (e) are not consistent with the requirements of those subsections or the fourth amendment to the Constitution of the United States, the Court shall issue an order directing the Government to, at the Government's election and to the extent required by the Court's order—

''(i) correct any deficiency identified by the Court's order not later than 30 days after the date the Court issues the order; or

''(ii) cease the acquisition authorized under subsection (a).

''(C) REQUIREMENT FOR WRITTEN STATEMENT.—In support of its orders under this subsection, the Court shall provide, simultaneously with the orders, for the record a written statement of its reasons.

''(6) APPEAL.—

''(A) APPEAL TO THE COURT OF REVIEW.—The Government may appeal any order under this section to the Foreign Intelligence Surveillance Court of Review, which shall have jurisdiction to review such order. For any decision affirming, reversing, or modifying an order of the Foreign Intelligence Surveillance Court, the Court of Review shall provide for the record a written statement of its reasons.

''(B) CONTINUATION OF ACQUISITION PENDING REHEARING OR APPEAL.—Any acquisitions affected by an order under paragraph (5)(B) may continue—

''(i) during the pendency of any rehearing of the order by the Court en banc; and

''(ii) or, if the Government appeals an order under this section, until the Court of Review enters an order under subparagraph (C).

''(C) IMPLEMENTATION PENDING APPEAL.—No later than 30 days after an appeal to it of an order under paragraph (5)(B) directing the correction of a deficiency, the Court of Review shall determine, and enter a corresponding order, whether all or any part of the correction order, as issued or modified, shall be implemented during the pendency of the appeal.

''(D) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a writ of certiorari for review of a 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) EXPEDITED JUDICIAL PROCEEDINGS.—Judicial proceedings under this section shall be conducted as expeditiously as possible.

''(j) MAINTENANCE AND SECURITY OF RECORDS AND PROCEEDINGS.—

''(1) STANDARDS.—A record of a proceeding under this section, including petitions filed, orders granted, and statements of reasons for decision, shall be maintained under security measures adopted by the Chief Justice of the United States, in consultation with the Attorney General and the Director of National Intelligence.

''(2) FILING AND REVIEW.—All petitions under this section shall be filed under seal. In any proceedings under this section, the court shall, upon request of the Government, review ex parte and in camera any Government submission, or portions of a submission, which may include classified information.

''(3) RETENTION OF RECORDS.—A directive made or an order granted under this section shall be retained for a period of not less than 10 years from the date on which such directive or such order is made.

''(k) ASSESSMENTS AND REVIEWS.—

''(1) SEMIANNUAL ASSESSMENT.—Not less frequently than once every 6 months, the Attorney General and Director of National Intelligence shall assess compliance with the targeting and minimization procedures required by subsections (e) and (f) and shall submit each such assessment to—

''(A) the Foreign Intelligence Surveillance Court; and

''(B) the congressional intelligence committees.

''(2) AGENCY ASSESSMENT.—The Inspectors General of the Department of Justice and of any element of the intelligence community authorized to acquire foreign intelligence information under subsection (a) with respect to their department, agency, or element—

''(A) are authorized to review the compliance with the targeting and minimization procedures required by subsections (d) and (e);

''(B) with respect to acquisitions authorized under subsection (a), shall review the number of disseminated intelligence reports containing a reference to a United States person identity and the number of United States person identities subsequently disseminated by the element concerned in response to requests for identities that were not referred to by name or title in the original reporting;

''(C) with respect to acquisitions authorized under subsection (a), shall review the number of targets that were later determined to be located in the United States and, to the extent possible, whether their communications were reviewed; and

''(D) shall provide each such review to—

''(i) the Attorney General;

''(ii) the Director of National Intelligence; and

''(iii) the congressional intelligence committees.

''(3) ANNUAL REVIEW.—

''(A) REQUIREMENT TO CONDUCT.—The head of an element of the intelligence community conducting an acquisition authorized under subsection (a) shall direct the element to conduct an annual review to determine whether there is reason to believe that foreign intelligence information has been or will be obtained from the acquisition. The annual review shall provide, with respect to such acquisitions authorized under subsection (a)—

''(i) an accounting of the number of disseminated intelligence reports containing a reference to a United States person identity;

''(ii) an accounting of the number of United States person identities subsequently disseminated by that element in response to requests for identities that were not referred to by name or title in the original reporting;

''(iii) the number of targets that were later determined to be located in the United States and, to the extent possible, whether their communications were reviewed; and

''(iv) a description of any procedures developed by the head of an element of the intelligence community and approved by the Director of National Intelligence to assess, in a manner consistent with national security, operational requirements and the privacy interests of United States persons, the extent to which the acquisitions authorized under subsection (a) acquire the communications of United States persons, as well as the results of any such assessment.

''(B) USE OF REVIEW.—The head of each element of the intelligence community that conducts an annual review under subparagraph (A) shall use each such review to evaluate the adequacy of the minimization procedures utilized by such element or the application of the minimization procedures to a particular acquisition authorized under subsection (a).

''(C) PROVISION OF REVIEW.—The head of each element of the intelligence community that conducts an annual review under subparagraph (A) shall provide such review to—

''(i) the Foreign Intelligence Surveillance Court;

''(ii) the Attorney General;

''(iii) the Director of National Intelligence; and

''(iv) the congressional intelligence committees.

''SEC. 704. CERTAIN ACQUISITIONS INSIDE THE UNITED STATES OF UNITED STATES PERSONS OUTSIDE THE UNITED STATES.

''(a) JURISDICTION OF THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.—

''(1) IN GENERAL.—The Foreign Intelligence Surveillance Court shall have jurisdiction to enter an order approving the targeting of a United States person reasonably believed to be located outside the United States to acquire foreign intelligence information, if such acquisition constitutes electronic surveillance (as defined in section 101(f), regardless of the limitation of section 701) or the acquisition of stored electronic communications or stored electronic data that requires an order under this Act, and such acquisition is conducted within the United States.

''(2) LIMITATION.—In the event that a United States person targeted under this subsection is reasonably believed to be located in the United States during the pendency of an order issued pursuant to subsection (c), such acquisition shall cease until authority, other than under this section, is obtained pursuant to this Act or the targeted United States person is again reasonably believed to be located outside the United States during the pendency of an order issued pursuant to subsection (c).

''(b) APPLICATION.—

''(1) IN GENERAL.—Each application for an order under this section shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under subsection (a)(1). Each application shall require the approval of the Attorney General based upon the Attorney General's finding that it satisfies the criteria and requirements of such application, as set forth in this section, and shall include—

''(A) the identity of the Federal officer making the application;

''(B) the identity, if known, or a description of the United States person who is the target of the acquisition;

''(C) a statement of the facts and circumstances relied upon to justify the applicant's belief that the United States person who is the target of the acquisition is—

''(i) a person reasonably believed to be located outside the United States; and

''(ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

''(D) a statement of the proposed minimization procedures consistent with the requirements of section 101(h) or section 301(4);

''(E) a description of the nature of the information sought and the type of communications or activities to be subjected to acquisition;

''(F) a certification made by the Attorney General or an official specified in section 104(a)(6) that—

''(i) the certifying official deems the information sought to be foreign intelligence information;

''(ii) a significant purpose of the acquisition is to obtain foreign intelligence information;

''(iii) such information cannot reasonably be obtained by normal investigative techniques;

''(iv) designates the type of foreign intelligence information being sought according to the categories described in section 101(e); and

''(v) includes a statement of the basis for the certification that—

''(I) the information sought is the type of foreign intelligence information designated; and

''(II) such information cannot reasonably be obtained by normal investigative techniques;

''(G) a summary statement of the means by which the acquisition will be conducted and whether physical entry is required to effect the acquisition;

''(H) the identity of any electronic communication service provider necessary to effect the acquisition, provided, however, that the application is not required to identify the specific facilities, places, premises, or property at which the acquisition authorized under this section will be directed or conducted;

''(I) a statement of the facts concerning any previous applications that have been made to any judge of the Foreign Intelligence Surveillance Court involving the United States person specified in the application and the action taken on each previous application; and

''(J) a statement of the period of time for which the acquisition is required to be maintained, provided that such period of time shall not exceed 90 days per application.

''(2) OTHER REQUIREMENTS OF THE ATTORNEY GENERAL.—The Attorney General may require any other affidavit or certification from any other officer in connection with the application.

''(3) OTHER REQUIREMENTS OF THE JUDGE.—The judge may require the applicant to furnish such other information as may be necessary to make the findings required by subsection (c)(1).

''(c) ORDER.—

''(1) FINDINGS.—Upon an application made pursuant to subsection (b), the Foreign Intelligence Surveillance Court shall enter an ex parte order as requested or as modified approving the acquisition if the Court finds that—

''(A) the application has been made by a Federal officer and approved by the Attorney General;

''(B) on the basis of the facts submitted by the applicant, for the United States person who is the target of the acquisition, there is probable cause to believe that the target is—

''(i) a person reasonably believed to be located outside the United States; and

''(ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

''(C) the proposed minimization procedures meet the definition of minimization procedures under section 101(h) or section 301(4); and

''(D) the application which has been filed contains all statements and certifications required by subsection (b) and the certification or certifications are not clearly erroneous on the basis of the statement made under subsection (b)(1)(F)(v) and any other information furnished under subsection (b)(3).

''(2) PROBABLE CAUSE.—In determining whether or not probable cause exists for purposes of an order under paragraph (1), a judge having jurisdiction under subsection (a)(1) may consider past activities of the target, as well as facts and circumstances relating to current or future activities of the target. However, no United States person may be considered a foreign power, agent of a foreign power, or officer or employee of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

''(3) REVIEW.—

''(A) LIMITATION ON REVIEW.—Review by a judge having jurisdiction under subsection (a)(1) shall be limited to that required to make the findings described in paragraph (1).

''(B) REVIEW OF PROBABLE CAUSE.—If the judge determines that the facts submitted under subsection (b) are insufficient to establish probable cause to issue an order under paragraph (1), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (f).

''(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the proposed minimization procedures required under paragraph (1)(C) do not meet the definition of minimization procedures under section 101(h) or section 301(4), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (f).

''(D) REVIEW OF CERTIFICATION.—If the judge determines that an application required by subsection (2) does not contain all of the required elements, or that the certification or certifications are clearly erroneous on the basis of the statement made under subsection (b)(1)(F)(v) and any other information furnished under subsection (b)(3), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (f).

''(4) SPECIFICATIONS.—An order approving an acquisition under this subsection shall specify—

''(A) the identity, if known, or a description of the United States person who is the target of the acquisition identified or described in the application pursuant to subsection (b)(1)(B);

''(B) if provided in the application pursuant to subsection (b)(1)(H), the nature and location of each of the facilities or places at which the acquisition will be directed;

''(C) the nature of the information sought to be acquired and the type of communications or activities to be subjected to acquisition;

''(D) the means by which the acquisition will be conducted and whether physical entry is required to effect the acquisition; and

''(E) the period of time during which the acquisition is approved.

''(5) DIRECTIONS.—An order approving acquisitions under this subsection shall direct—

''(A) that the minimization procedures be followed;

''(B) an electronic communication service provider to provide to the Government forthwith all information, facilities, or assistance necessary to accomplish the acquisition authorized under this subsection 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;

''(C) an electronic communication service provider to maintain under security procedures approved by the Attorney General any records concerning the acquisition or the aid furnished that such electronic communication service provider wishes to maintain; and

''(D) that the Government compensate, at the prevailing rate, such electronic communication service provider for providing such information, facilities, or assistance.

''(6) DURATION.—An order approved under this paragraph shall be effective for a period not to exceed 90 days and such order may be renewed for additional 90-day periods upon submission of renewal applications meeting the requirements of subsection (b).

''(7) COMPLIANCE.—At or prior to the end of the period of time for which an acquisition is approved by an order or extension under this section, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.

''(d) EMERGENCY AUTHORIZATION.—

''(1) AUTHORITY FOR EMERGENCY AUTHORIZATION.—Notwithstanding any other provision of this Act, if the Attorney General reasonably determines that—

''(A) an emergency situation exists with respect to the acquisition of foreign intelligence information for which an order may be obtained under subsection (c) before an order authorizing such acquisition can with due diligence be obtained; and

''(B) the factual basis for issuance of an order under this subsection to approve such acquisition exists,

the Attorney General may authorize the emergency acquisition if a judge having jurisdiction under subsection (a)(1) is informed by the Attorney General, or a designee of the Attorney General, at the time of such authorization that the decision has been made to conduct such acquisition and if an application in accordance with this subsection is made to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 168 hours after the Attorney General authorizes such acquisition.

''(2) MINIMIZATION PROCEDURES.—If the Attorney General authorizes such emergency acquisition, the Attorney General shall require that the minimization procedures required by this subsection for the issuance of a judicial order be followed.

''(3) TERMINATION OF EMERGENCY AUTHORIZATION.—In the absence of a judicial order approving such acquisition, the acquisition shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 168 hours from the time of authorization by the Attorney General, whichever is earliest.

''(4) USE OF INFORMATION.—In the event that such application for approval is denied, or in any other case where the acquisition is terminated and no order is issued approving the acquisition, no information obtained or evidence derived from such acquisition, except under circumstances in which the target of the acquisition is determined not to be a United States person during the pendency of the 168-hour emergency acquisition period, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

''(e) 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 an order or request for emergency assistance issued pursuant to subsections (c) or (d).

''(f) APPEAL.—

''(1) APPEAL TO THE FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW.—The Government may file an appeal with the Foreign Intelligence Surveillance Court of Review for review of an order issued pursuant to subsection (c). The Court of Review shall have jurisdiction to consider such appeal and shall provide a written statement for the record of the reasons for a decision under this paragraph.

''(2) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a

writ of certiorari for review of the decision of the Court of Review issued under paragraph (1). 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.

"SEC. 705. OTHER ACQUISITIONS TARGETING UNITED STATES PERSONS OUTSIDE THE UNITED STATES.

''(a) JURISDICTION AND SCOPE.—

''(1) JURISDICTION.—The Foreign Intelligence Surveillance Court shall have jurisdiction to enter an order pursuant to subsection (c).

''(2) SCOPE.—No element of the intelligence community may intentionally target, for the purpose of acquiring foreign intelligence information, a United States person reasonably believed to be located outside the United States under circumstances in which the targeted United States person has a reasonable expectation of privacy and a warrant would be required if the acquisition were conducted inside the United States for law enforcement purposes, unless a judge of the Foreign Intelligence Surveillance Court has entered an order or the Attorney General has authorized an emergency acquisition pursuant to subsections (c) or (d) or any other provision of this Act.

''(3) LIMITATIONS.—

''(A) MOVING OR MISIDENTIFIED TARGETS.—In the event that the targeted United States person is reasonably believed to be in the United States during the pendency of an order issued pursuant to subsection (c), such acquisition shall cease until authority is obtained pursuant to this Act or the targeted United States person is again reasonably believed to be located outside the United States during the pendency of an order issued pursuant to subsection (c).

''(B) APPLICABILITY.—If the acquisition is to be conducted inside the United States and could be authorized under section 704, the procedures of section 704 shall apply, unless an order or emergency acquisition authority has been obtained under a provision of this Act other than under this section.

''(b) APPLICATION.—Each application for an order under this section shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under subsection (a)(1). Each application shall require the approval of the Attorney General based upon the Attorney General's finding that it satisfies the criteria and requirements of such application as set forth in this section and shall include—

''(1) the identity, if known, or a description of the specific United States person who is the target of the acquisition;

''(2) a statement of the facts and circumstances relied upon to justify the applicant's belief that the United States person who is the target of the acquisition is—

''(A) a person reasonably believed to be located outside the United States; and

''(B) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

''(3) a statement of the proposed minimization procedures consistent with the requirements of section 101(h) or section 301(4);

''(4) a certification made by the Attorney General, an official specified in section 104(a)(6), or the head of an element of the intelligence community that—

''(A) the certifying official deems the information sought to be foreign intelligence information; and

''(B) a significant purpose of the acquisition is to obtain foreign intelligence information;

''(5) a statement of the facts concerning any previous applications that have been made to any judge of the Foreign Intelligence Surveillance Court involving the United States person specified in the application and the action taken on each previous application; and

''(6) a statement of the period of time for which the acquisition is required to be maintained, provided that such period of time shall not exceed 90 days per application.

''(c) ORDER.—

''(1) FINDINGS.—If, upon an application made pursuant to subsection (b), a judge having jurisdiction under subsection (a) finds that—

''(A) on the basis of the facts submitted by the applicant, for the United States person who is the target of the acquisition, there is probable cause to believe that the target is—

''(i) a person reasonably believed to be located outside the United States; and

''(ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

''(B) the proposed minimization procedures, with respect to their dissemination provisions, meet the definition of minimization procedures under section 101(h) or section 301(4); and

''(C) the application which has been filed contains all statements and certifications required by subsection (b) and the certification provided under subsection (b)(4) is not clearly erroneous on the basis of the information furnished under subsection (b),

the Court shall issue an ex parte order so stating.

''(2) PROBABLE CAUSE.—In determining whether or not probable cause exists for purposes of an order under paragraph (1)(A), a judge having jurisdiction under subsection (a)(1) may consider past activities of the target, as well as facts and circumstances relating to current or future activities of the target. However, no United States person may be considered a foreign power, agent of a foreign power, or officer or employee of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

''(3) REVIEW.—

''(A) LIMITATIONS ON REVIEW.—Review by a judge having jurisdiction under subsection (a)(1) shall be limited to that required to make the findings described in paragraph (1). The judge shall not have jurisdiction to review the means by which an acquisition under this section may be conducted.

''(B) REVIEW OF PROBABLE CAUSE.—If the judge determines that the facts submitted under subsection (b) are insufficient to establish probable cause to issue an order under this subsection, the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (e).

''(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the minimization procedures applicable to dissemination of information obtained through an acquisition under this subsection do not meet the definition of minimization procedures under section 101(h) or section 301(4), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (e).

''(D) SCOPE OF REVIEW OF CERTIFICATION.—If the judge determines that the certification provided under subsection (b)(4) is clearly erroneous on the basis of the information furnished under subsection (b), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (e).

''(4) DURATION.—An order under this paragraph shall be effective for a period not to exceed 90 days and such order may be renewed for additional 90-day periods upon submission of renewal applications meeting the requirements of subsection (b).

''(5) COMPLIANCE.—At or prior to the end of the period of time for which an order or extension is granted under this section, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was disseminated, provided that the judge may not inquire into the circumstances relating to the conduct of the acquisition.

''(d) EMERGENCY AUTHORIZATION.—

''(1) AUTHORITY FOR EMERGENCY AUTHORIZATION.—Notwithstanding any other provision in this subsection, if the Attorney General reasonably determines that—

''(A) an emergency situation exists with respect to the acquisition of foreign intelligence information for which an order may be obtained under subsection (c) before an order under that subsection may, with due diligence, be obtained; and

''(B) the factual basis for issuance of an order under this section exists,

the Attorney General may authorize the emergency acquisition if a judge having jurisdiction under subsection (a)(1) is informed by the Attorney General or a designee of the Attorney General at the time of such authorization that the decision has been made to conduct such acquisition and if an application in accordance with this subsection is made to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 168 hours after the Attorney General authorizes such acquisition.

''(2) MINIMIZATION PROCEDURES.—If the Attorney General authorizes such emergency acquisition, the Attorney General shall require that the minimization procedures required by this subsection be followed.

''(3) TERMINATION OF EMERGENCY AUTHORIZATION.—In the absence of an order under subsection (c), the acquisition shall terminate when the information sought is obtained, if the application for the order is denied, or after the expiration of 168 hours from the time of authorization by the Attorney General, whichever is earliest.

''(4) USE OF INFORMATION.—In the event that such application is denied, or in any other case where the acquisition is terminated and no order is issued approving the acquisition, no information obtained or evidence derived from such acquisition, except under circumstances in which the target of the acquisition is determined not to be a United States person during the pendency of the 168-hour emergency acquisition period, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

''(e) APPEAL.—

''(1) APPEAL TO THE COURT OF REVIEW.—The Government may file an appeal with the Foreign Intelligence Surveillance Court of Review for review of an order issued pursuant to subsection (c). The Court of Review shall have jurisdiction to consider such appeal and shall provide a written statement for the

record of the reasons for a decision under this paragraph.

''(2) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a writ of certiorari for review of the decision of the Court of Review issued under paragraph (1). 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.

''SEC. 706. JOINT APPLICATIONS AND CONCURRENT AUTHORIZATIONS.

''(a) JOINT APPLICATIONS AND ORDERS.—If an acquisition targeting a United States person under section 704 or section 705 is proposed to be conducted both inside and outside the United States, a judge having jurisdiction under section 704(a)(1) or section 705(a)(1) may issue simultaneously, upon the request of the Government in a joint application complying with the requirements of section 704(b) or section 705(b), orders under section 704(b) or section 705(b), as applicable.

''(b) CONCURRENT AUTHORIZATION.—If an order authorizing electronic surveillance or physical search has been obtained under section 105 or section 304 and that order is still in effect, the Attorney General may authorize, without an order under section 704 or section 705, an acquisition of foreign intelligence information targeting that United States person while such person is reasonably believed to be located outside the United States.

''SEC. 707. USE OF INFORMATION ACQUIRED UNDER TITLE VII.

''(a) INFORMATION ACQUIRED UNDER SECTION 703.—Information acquired from an acquisition conducted under section 703 shall be deemed to be information acquired from an electronic surveillance pursuant to title I for purposes of section 106, except for the purposes of subsection (j) of such section.

''(b) INFORMATION ACQUIRED UNDER SECTION 704.—Information acquired from an acquisition conducted under section 704 shall be deemed to be information acquired from an electronic surveillance pursuant to title I for purposes of section 106.

''SEC. 708. CONGRESSIONAL OVERSIGHT.

''(a) SEMIANNUAL REPORT.—Not less frequently than once every 6 months, the Attorney General shall fully inform, in a manner consistent with national security, the congressional intelligence committees, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives, concerning the implementation of this title.

''(b) CONTENT.—Each report made under subparagraph (a) shall include—

''(1) with respect to section 703—

''(A) any certifications made under subsection 703(f) during the reporting period;

''(B) any directives issued under subsection 703(g) during the reporting period;

''(C) a description of the judicial review during the reporting period of any such certifications and targeting and minimization procedures utilized with respect to such acquisition, including a copy of any order or pleading in connection with such review that contains a significant legal interpretation of the provisions of this section;

''(D) any actions taken to challenge or enforce a directive under paragraphs (4) or (5) of section 703(g);

''(E) any compliance reviews conducted by the Department of Justice or the Office of the Director of National Intelligence of acquisitions authorized under subsection 703(a);

''(F) a description of any incidents of noncompliance with a directive issued by the Attorney General and the Director of National Intelligence under subsection 703(g), including—

''(i) incidents of noncompliance by an element of the intelligence community with procedures adopted pursuant to subsections (d) and (e) of section 703; and

''(ii) incidents of noncompliance by a specified person to whom the Attorney General and Director of National Intelligence issued a directive under subsection 703(g); and

''(G) any procedures implementing this section;

''(2) with respect to section 704—

''(A) the total number of applications made for orders under section 704(b);

''(B) the total number of such orders either granted, modified, or denied; and

''(C) the total number of emergency acquisitions authorized by the Attorney General under section 704(d) and the total number of subsequent orders approving or denying such acquisitions; and

''(3) with respect to section 705—

''(A) the total number of applications made for orders under 705(b);

''(B) the total number of such orders either granted, modified, or denied; and

''(C) the total number of emergency acquisitions authorized by the Attorney General under subsection 705(d) and the total number of subsequent orders approving or denying such applications.''.

(b) 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—

(1) by striking the item relating to title VII;

(2) by striking the item relating to section 701; and

(3) by adding at the end the following:

''TITLE VII—ADDITIONAL PROCEDURES REGARDING CERTAIN PERSONS OUTSIDE THE UNITED STATES

''Sec. 701. Limitation on definition of electronic surveillance.

''Sec. 702. Definitions.

''Sec. 703. Procedures for targeting certain persons outside the United States other than United States persons.

''Sec. 704. Certain acquisitions inside the United States of United States persons outside the United States.

''Sec. 705. Other acquisitions targeting United States persons outside the United States.

''Sec. 706. Joint applications and concurrent authorizations.

''Sec. 707. Use of information acquired under title VII.

''Sec. 708. Congressional oversight.''.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TITLE 18, UNITED STATES CODE.—

(A) SECTION 2232.—Section 2232(e) of title 18, United States Code, is amended by inserting ''(as defined in section 101(f) of the Foreign Intelligence Surveillance Act of 1978, regardless of the limitation of section 701 of that Act)'' after ''electronic surveillance''.

(B) SECTION 2511.—Section 2511(2)(a)(ii)(A) of title 18, United States Code, is amended by inserting ''or a court order pursuant to section 705 of the Foreign Intelligence Surveillance Act of 1978'' after ''assistance''.

(2) FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.—

(A) SECTION 109.—Section 109 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1809) is amended 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.''.

(B) SECTION 110.—Section 110 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1810) is amended by—

(i) adding an ''(a)'' before ''CIVIL ACTION'',

(ii) redesignating subsections (a) through (c) as paragraphs (1) through (3), respectively; and

(iii) adding at the end the following:

''(b) 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) SECTION 601.—Section 601(a)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1871(a)(1)) is amended by striking subparagraphs (C) and (D) and inserting the following:

''(C) pen registers under section 402;

''(D) access to records under section 501;

''(E) acquisitions under section 704; and

''(F) acquisitions under section 705;''.

(d) TERMINATION OF AUTHORITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsections (a)(2), (b), and (c) shall cease to have effect on December 31, 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.

(2) CONTINUING APPLICABILITY.—Section 703(g)(3) of the Foreign Intelligence Surveillance Act of 1978 (as amended by subsection (a)) shall remain in effect with respect to any directive issued pursuant to section 703(g) of that Act (as so amended) during the period such directive was in effect. Section 704(e) of the Foreign Intelligence Surveillance Act of 1978 (as amended by subsection (a)) shall remain in effect with respect to an order or request for emergency assistance under that section. The use of information acquired by an acquisition conducted under section 703 of that Act (as so amended) shall continue to be governed by the provisions of section 707 of that Act (as so amended).

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(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1809(a)) is amended 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''.

(c) CONFORMING AMENDMENTS.—

(1) TITLE 18, UNITED STATES CODE.—Section 2511(2)(a) of title 18, United States Code, is amended 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.''.

(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.''.

SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN COURT ORDERS UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

(a) INCLUSION OF CERTAIN ORDERS IN SEMI-ANNUAL REPORTS OF ATTORNEY GENERAL.—Subsection (a)(5) of section 601 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1871) is amended by striking ''(not including orders)'' and inserting '', orders,''.

(b) REPORTS BY ATTORNEY GENERAL ON CERTAIN OTHER ORDERS.—Such section 601 is further amended by adding at the end the following new subsection:

''(c) SUBMISSIONS TO CONGRESS.—The Attorney General shall submit to the committees of Congress referred to in subsection (a)—

''(1) a copy of any decision, order, or opinion issued by the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review that includes significant construction or interpretation of any provision of this Act, and any pleadings associated with such decision, order, or opinion, not later than 45 days after such decision, order, or opinion is issued; and

''(2) a copy of any such decision, order, or opinion, and the pleadings associated with such decision, order, or opinion, that was issued during the 5-year period ending on the date of the enactment of the FISA Amendments Act of 2008 and not previously submitted in a report under subsection (a).''.

(c) DEFINITIONS.—Such section 601, as amended by subsections (a) and (b), is further amended by adding at the end the following:

''(d) DEFINITIONS.—In this section:

''(1) FOREIGN INTELLIGENCE SURVEILLANCE COURT; COURT.—The term ''Foreign Intelligence Surveillance Court'' means the court established by section 103(a).

''(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW; COURT OF REVIEW.—The term 'Foreign Intelligence Surveillance Court of Review' means the court established by section 103(b).''.

SEC. 104. APPLICATIONS FOR COURT ORDERS.

Section 104 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804) is amended—

(1) in subsection (a)—

(A) by striking paragraphs (2) and (11);

(B) by redesignating paragraphs (3) through (10) as paragraphs (2) through (9), respectively;

(C) in paragraph (5), as redesignated by subparagraph (B) of this paragraph, by striking ''detailed'';

(D) in paragraph (6), as redesignated by subparagraph (B) of this paragraph, in the matter preceding subparagraph (A)—

(i) by striking ''Affairs or'' and inserting ''Affairs,''; and

(ii) by striking ''Senate—'' and inserting ''Senate, or the Deputy Director of the Federal Bureau of Investigation, if designated by the President as a certifying official—'';

(E) in paragraph (7), as redesignated by subparagraph (B) of this paragraph, by striking ''statement of'' and inserting ''summary statement of'';

(F) in paragraph (8), as redesignated by subparagraph (B) of this paragraph, by adding ''and'' at the end; and

(G) in paragraph (9), as redesignated by subparagraph (B) of this paragraph, by striking ''; and'' and inserting a period;

(2) by striking subsection (b);

(3) by redesignating subsections (c) through (e) as subsections (b) through (d), respectively; and

(4) in paragraph (1)(A) of subsection (d), as redesignated by paragraph (3) of this subsection, by striking ''or the Director of National Intelligence'' and inserting ''the Director of National Intelligence, or the Director of the Central Intelligence Agency''.

SEC. 105. ISSUANCE OF AN ORDER.

Section 105 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805) is amended—

(1) in subsection (a)—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively;

(2) in subsection (b), by striking ''(a)(3)'' and inserting ''(a)(2)'';

(3) in subsection (c)(1)—

(A) in subparagraph (D), by adding ''and'' at the end;

(B) in subparagraph (E), by striking ''; and'' and inserting a period; and

(C) by striking subparagraph (F);

(4) by striking subsection (d);

(5) by redesignating subsections (e) through (i) as subsections (d) through (h), respectively;

(6) by amending subsection (e), as redesignated by paragraph (5) of this section, to read as follows:

''(e)(1) Notwithstanding any other provision of this title, the Attorney General may authorize the emergency employment of electronic surveillance if the Attorney General reasonably—

''(A) determines that an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained;

''(B) determines that the factual basis for issuance of an order under this title to approve such electronic surveillance exists;

''(C) informs, either personally or through a designee, a judge having jurisdiction under section 103 at the time of such authorization that the decision has been made to employ emergency electronic surveillance; and

''(D) makes an application in accordance with this title to a judge having jurisdiction under section 103 as soon as practicable, but not later than 168 hours after the Attorney General authorizes such surveillance.

''(2) If the Attorney General authorizes the emergency employment of electronic surveillance under paragraph (1), the Attorney General shall require that the minimization procedures required by this title for the issuance of a judicial order be followed.

''(3) In the absence of a judicial order approving such electronic surveillance, the surveillance shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 168 hours from the time of authorization by the Attorney General, whichever is earliest.

''(4) A denial of the application made under this subsection may be reviewed as provided in section 103.

''(5) In the event that such application for approval is denied, or in any other case where the electronic surveillance is terminated and no order is issued approving the surveillance, no information obtained or evidence derived from such surveillance shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such surveillance shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

''(6) The Attorney General shall assess compliance with the requirements of paragraph (5).''; and

(7) by adding at the end the following:

''(i) In any case in which the Government makes an application to a judge under this title to conduct electronic surveillance involving communications and the judge grants such application, upon the request of the applicant, the judge shall also authorize the installation and use of pen registers and trap and trace devices, and direct the disclosure of the information set forth in section 402(d)(2).''.

SEC. 106. USE OF INFORMATION.

Subsection (i) of section 106 of the Foreign Intelligence Surveillance Act of 1978 (8 U.S.C. 1806) is amended by striking ''radio communication'' and inserting ''communication''.

SEC. 107. AMENDMENTS FOR PHYSICAL SEARCHES.

(a) APPLICATIONS.—Section 303 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1823) is amended—

(1) in subsection (a)—

(A) by striking paragraph (2);

(B) by redesignating paragraphs (3) through (9) as paragraphs (2) through (8), respectively;

(C) in paragraph (2), as redesignated by subparagraph (B) of this paragraph, by striking ''detailed'';

(D) in paragraph (3)(C), as redesignated by subparagraph (B) of this paragraph, by inserting ''or is about to be'' before ''owned''; and

(E) in paragraph (6), as redesignated by subparagraph (B) of this paragraph, in the matter preceding subparagraph (A)—

(i) by striking ''Affairs or'' and inserting ''Affairs,''; and

(ii) by striking ''Senate—'' and inserting ''Senate, or the Deputy Director of the Federal Bureau of Investigation, if designated by the President as a certifying official—''; and

(2) in subsection (d)(1)(A), by striking ''or the Director of National Intelligence'' and inserting ''the Director of National Intelligence, or the Director of the Central Intelligence Agency''.

(b) ORDERS.—Section 304 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1824) is amended—

(1) in subsection (a)—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively; and

(2) by amending subsection (e) to read as follows:

''(e)(1) Notwithstanding any other provision of this title, the Attorney General may

authorize the emergency employment of a physical search if the Attorney General reasonably—

''(A) determines that an emergency situation exists with respect to the employment of a physical search to obtain foreign intelligence information before an order authorizing such physical search can with due diligence be obtained;

''(B) determines that the factual basis for issuance of an order under this title to approve such physical search exists;

''(C) informs, either personally or through a designee, a judge of the Foreign Intelligence Surveillance Court at the time of such authorization that the decision has been made to employ an emergency physical search; and

''(D) makes an application in accordance with this title to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 168 hours after the Attorney General authorizes such physical search.

''(2) If the Attorney General authorizes the emergency employment of a physical search under paragraph (1), the Attorney General shall require that the minimization procedures required by this title for the issuance of a judicial order be followed.

''(3) In the absence of a judicial order approving such physical search, the physical search shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 168 hours from the time of authorization by the Attorney General, whichever is earliest.

''(4) A denial of the application made under this subsection may be reviewed as provided in section 103.

''(5)(A) In the event that such application for approval is denied, or in any other case where the physical search is terminated and no order is issued approving the physical search, no information obtained or evidence derived from such physical search shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such physical search shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

''(B) The Attorney General shall assess compliance with the requirements of subparagraph (A).''.

(c) CONFORMING AMENDMENTS.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

(1) in section 304(a)(4), as redesignated by subsection (b) of this section, by striking ''303(a)(7)(E)'' and inserting ''303(a)(6)(E)''; and

(2) in section 305(k)(2), by striking ''303(a)(7)'' and inserting ''303(a)(6)''.

SEC. 108. AMENDMENTS FOR EMERGENCY PEN REGISTERS AND TRAP AND TRACE DEVICES.

Section 403 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1843) is amended—

(1) in subsection (a)(2), by striking ''48 hours'' and inserting ''168 hours''; and

(2) in subsection (c)(1)(C), by striking ''48 hours'' and inserting ''168 hours''.

SEC. 109. FOREIGN INTELLIGENCE SURVEILLANCE COURT.

(a) DESIGNATION OF JUDGES.—Subsection (a) of section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) is amended by inserting ''at least'' before ''seven of the United States judicial circuits''.

(b) EN BANC AUTHORITY.—

(1) IN GENERAL.—Subsection (a) of section 103 of the Foreign Intelligence Surveillance Act of 1978, as amended by subsection (a) of this section, is further amended—

(A) by inserting ''(1)'' after ''(a)''; and

(B) by adding at the end the following new paragraph:

''(2)(A) The court established under this subsection may, on its own initiative, or upon the request of the Government in any proceeding or a party under section 501(f) or paragraph (4) or (5) of section 703(h), hold a hearing or rehearing, en banc, when ordered by a majority of the judges that constitute such court upon a determination that—

''(i) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or

''(ii) the proceeding involves a question of exceptional importance.

''(B) Any authority granted by this Act to a judge of the court established under this subsection may be exercised by the court en banc. When exercising such authority, the court en banc shall comply with any requirements of this Act on the exercise of such authority.

''(C) For purposes of this paragraph, the court en banc shall consist of all judges who constitute the court established under this subsection.''.

(2) CONFORMING AMENDMENTS.—The Foreign Intelligence Surveillance Act of 1978 is further amended—

(A) in subsection (a) of section 103, as amended by this subsection, by inserting ''(except when sitting en banc under paragraph (2))'' after ''no judge designated under this subsection''; and

(B) in section 302(c) (50 U.S.C. 1822(c)), by inserting ''(except when sitting en banc)'' after ''except that no judge''.

(c) STAY OR MODIFICATION DURING AN APPEAL.—Section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) is amended—

(1) by redesignating subsection (f) as subsection (g); and

(2) by inserting after subsection (e) the following new subsection:

''(f)(1) A judge of the court established under subsection (a), the court established under subsection (b) or a judge of that court, or the Supreme Court of the United States or a justice of that court, may, in accordance with the rules of their respective courts, enter a stay of an order or an order modifying an order of the court established under subsection (a) or the court established under subsection (b) entered under any title of this Act, while the court established under subsection (a) conducts a rehearing, while an appeal is pending to the court established under subsection (b), or while a petition of certiorari is pending in the Supreme Court of the United States, or during the pendency of any review by that court.

''(2) The authority described in paragraph (1) shall apply to an order entered under any provision of this Act.''.

SEC. 110. TECHNICAL AND CONFORMING AMENDMENTS.

Section 103(e) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(e)) is amended—

(1) in paragraph (1), by striking ''105B(h) or 501(f)(1)'' and inserting ''501(f)(1) or 703''; and

(2) in paragraph (2), by striking ''105B(h) or 501(f)(1)'' and inserting ''501(f)(1) or 703''.

SA 3937. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) 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 22, beginning with line 1 strike all through page 23 line 13, and insert the following:

''(C) with respect to acquisitions authorized under subsection (a), shall review the number of targets that were later determined to be located in the United States and, to the extent possible, whether their communications were reviewed, and an estimate of the total number of persons reasonably believed to be located in the United States whose communications were reviewed; and

''(D) shall provide each such review to—

''(i) the Attorney General;

''(ii) the Director of National Intelligence; and

''(iii) the congressional intelligence committees.

''(3) ANNUAL REVIEW.—

''(A) REQUIREMENT TO CONDUCT.—The head of an element of the intelligence community conducting an acquisition authorized under subsection (a) shall direct the element to conduct an annual review to determine whether there is reason to believe that foreign intelligence information has been or will be obtained from the acquisition. The annual review shall provide, with respect to such acquisitions authorized under subsection (a)—

''(i) an accounting of the number of disseminated intelligence reports containing a reference to a United States person identity;

''(ii) an accounting of the number of United States person identities subsequently disseminated by that element in response to requests for identities that were not referred to by name or title in the original reporting;

''(iii) the number of targets that were later determined to be located in the United States and, to the extent possible, whether their communications were reviewed, and an estimate of the total number of persons reasonably believed to be located in the United States whose communications were reviewed; and

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SA 3938. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) 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 103 and insert the following:

SEC. 103. WEAPONS OF MASS DESTRUCTION.

(a) DEFINITIONS.—

(1) FOREIGN POWER.—Subsection (a)(4) of section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(a)(4)) is amended by inserting '', the international proliferation of weapons of mass destruction,'' after ''international terrorism''.

(2) AGENT OF A FOREIGN POWER.—Subsection (b)(1) of such section 101 is amended—

(A) in subparagraph (B), by striking ''or'' at the end

(B) in subparagraph (C), by striking ''or'' at the end; and

(C) by adding at the end the following new subparagraphs:

''(D) engages in the international proliferation of weapons of mass destruction, or activities in preparation therefor; or

''(E) engages in the international proliferation of weapons of mass destruction, or activities in preparation therefor, for or on behalf of a foreign power; or''.

(3) FOREIGN INTELLIGENCE INFORMATION.—Subsection (e)(1)(B) of such section 101 is amended by striking ''sabotage or international terrorism'' and inserting ''sabotage, international terrorism, or the international proliferation of weapons of mass destruction''.

(4) WEAPON OF MASS DESTRUCTION.—Such section 101 is amended by inserting after subsection (o) the following:

''(p) 'Weapon of mass destruction' means—

''(1) any destructive device (as such term is defined in section 921 of title 18, United States Code) that is intended or has the capability to cause death or serious bodily injury to a significant number of people;

''(2) any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals or their precursors;

''(3) any weapon involving a biological agent, toxin, or vector (as such terms are defined in section 178 of title 18, United States Code); or

''(4) any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.''.

(b) USE OF INFORMATION.—

(1) IN GENERAL.—Section 106(k)(1)(B) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806(k)(1)(B)) is amended by striking ''sabotage or international terrorism'' and inserting ''sabotage, international terrorism, or the international proliferation of weapons of mass destruction''.

(2) PHYSICAL SEARCHES.—Section 305(k)(1)(B) of such Act (50 U.S.C. 1825(k)(1)(B)) is amended by striking ''sabotage or international terrorism'' and inserting ''sabotage, international terrorism, or the international proliferation of weapons of mass destruction''.

SA 3939. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) 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 63, strike lines 7 through 9, and insert the following:

(D) in paragraph (3), as redesignated by subparagraph (B) of this paragraph—

(i) by inserting ''and'' at the end;

(ii) by striking subparagraphs (B) and (C) and inserting the following:

''(B) the premises or property to be searched is or is about to be owned, used, possessed by, or is in transit to or from a foreign power or an agent of a foreign power;''.

SA 3940. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) 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 103 and insert the following:

SEC. 103. MODERNIZING DEFINITIONS.

(a) ELECTRONIC SURVEILLANCE.—Subsection (f) of section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801) is amended to read as follows:

''(f) 'Electronic surveillance' means—

''(1) the installation or use of an electronic, mechanical, or other surveillance device for acquiring information by intentionally directing surveillance at a particular, known person who is reasonably believed to be located within the United States under circumstances in which that person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes; or

''(2) the intentional acquisition of the contents of any communication under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, if both the sender and all intended recipients are reasonably believed to be located outside the United States.''.

(b) WIRE COMMUNICATION.—Section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801) is amended by striking subsection (l).

(c) CONTENTS.—Subsection (n) of section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801) is amended to read as follows:

''(n) 'Contents', when used with respect to a communication, includes any information concerning the substance, purport, or meaning of that communication.''.

SA 3941. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) 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 13, between lines 2 and 3, insert the following:

''(C) EXPEDITED REVIEW.—Not later than 48 hours after the assignment of a petition filed under subparagraph (A), the assigned judge shall conduct an initial review of the directive. If the assigned judge determines that the petition is frivolous, the assigned judge shall immediately deny the petition and affirm the directive or any part of the directive that is the subject of the petition. If the assigned judge determines that the petition is not frivolous, the assigned judge shall, within 72 hours, consider the petition in accordance with the procedures established under section 103(e)(2) and provide a written statement for the record of the reasons for any determination under this subparagraph.''.

(b) CONFORMING AMENDMENTS.

(1) On page 13, line 3, strike ''(C)'' and insert ''(D)'';

(2) On page 13, line 14, strike ''(D)'' and insert ''(E)'';

(3) On page 13, line 21, strike ''(E)'' and insert ''(F)''.

SA 3942. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) 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 12, strike lines 8 through 13, and insert the following:

''(3) RELEASE FROM LIABILITY.—Notwithstanding any other law, and in addition to the immunities, privileges, and defenses provided by any other source of law, no cause of action or claim may lie or proceeding be maintained in any court or any other body, and no penalty, sanction, or other form of remedy or relief shall be imposed by any court or any other body, against any electronic communication service provider for providing any information, facilities, or assistance in accordance with a directive issued pursuant to paragraph (1).''.

SA 3943. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) 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 62, strike lines 15 through 18, and insert the following:

Section 106 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806) is amended—

(1) in subsection (i), by striking ''radio communication'' and inserting ''communication''; and

(2) by adding at the end the following new subsection:

''(l) Nothing in this section shall prevent the United States from seeking protective orders or asserting privileges ordinarily available to the United States to protect against the disclosure of classified information.''.

SA 3944. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) 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 103 and insert the following:

SEC. 103. CLARIFICATION OF THE DEFINITION OF UNITED STATES PERSON.

Subsection (i) of section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801) is amended by striking '', as defined in subsection (a)(1), (2), or (3)''.

SA 3945. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) 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 15, beginning on line 10, strike ''not later than 7 days after the issuance of such decision''.

SA 3946. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) 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. CONSTITUTIONAL POWER OF THE PRESIDENT.

Subsection (2)(f) of section 2511 of title 18, United States Code, is amended to read as follows:

''(f) Nothing contained in this chapter, in section 705 of the Communications Act of 1934 (47 U.S.C. 605), or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) shall limit the constitutional power of the President to take such measures as the President deems necessary to protect the United States against actual or potential attack or other hostile acts of a foreign power, to obtain foreign intelligence information deemed essential to the security of the United States, or to protect national security information against foreign intelligence activities. Nor shall anything contained in this chapter or the Foreign Intelligence Surveillance Act of 1978 be deemed to limit the constitutional power of the President to take such measures as the President deems necessary to protect the United States against the overthrow of the Government by force or other unlawful means, or against any other clear and present danger to the structure or existence of the Government. The contents of any wire or oral communication intercepted by authority of the President in the exercise of the foregoing powers may be received in evidence in any trial hearing, or other proceeding only where such interception was reasonable, and shall not be otherwise used or disclosed except as is necessary to implement that power.''.

SA 3947. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) 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 54, strike line 12 and all that follows through page 55, line 5.

SA 3948. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) 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 all after page 1, line 7 and insert the following:

TITLE I—EXTENSION OF THE PROTECT AMERICA ACT OF 2007

SEC. 101. EXTENSION OF THE PROTECT AMERICA ACT OF 2007.

Section 6 of the Protect America Act of 2007 (Public Law 110–55; 121 Stat. 557; 50 U.S.C. 1803 note) is amended by striking subsection (c).

TITLE II—PROTECTIONS FOR ELECTRONIC COMMUNICATION SERVICE PROVIDERS

SEC. 201. DEFINITIONS.

In this title:

(1) ASSISTANCE.—The term ''assistance'' means the provision of, or the provision of access to, information (including communication contents, communications records, or other information relating to a customer or communication), facilities, or another form of assistance.

(2) CONTENTS.—The term ''contents'' has the meaning given that term in section 101(n) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(n)).

(3) COVERED CIVIL ACTION.—The term ''covered civil action'' means a civil action filed in a Federal or State court that—

(A) alleges that an electronic communication service provider furnished assistance to an element of the intelligence community; and

(B) seeks monetary or other relief from the electronic communication service provider related to the provision of such assistance.

(4) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term ''electronic communication service provider'' means—

(A) a telecommunications carrier, as that term is defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153);

(B) a provider of an electronic communication service, as that term is defined in section 2510 of title 18, United States Code;

(C) a provider of a remote computing service, as that term is defined in section 2711 of title 18, United States Code;

(D) any other communication service provider who has access to wire or electronic communications either as such communications are transmitted or as such communications are stored;

(E) a parent, subsidiary, affiliate, successor, or assignee of an entity described in subparagraph (A), (B), (C), or (D); or

(F) an officer, employee, or agent of an entity described in subparagraph (A), (B), (C), (D), or (E).

(5) ELEMENT OF THE INTELLIGENCE COMMUNITY.—The term ''element of the intelligence community'' means an element of the intelligence community specified in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

SEC. 202. LIMITATIONS ON CIVIL ACTIONS FOR ELECTRONIC COMMUNICATION SERVICE PROVIDERS.

(a) LIMITATIONS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, 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) REVIEW.—A certification made pursuant to paragraph (1) shall be subject to review by a court for abuse of discretion.

(b) REVIEW OF CERTIFICATIONS.—If the Attorney General files a declaration under section 1746 of title 28, United States Code, that disclosure of a certification made pursuant to subsection (a) would harm the national security of the United States, the court shall—

(1) review such certification in camera and ex parte; and

(2) limit any public disclosure concerning such certification, including any public order following such an ex parte review, to a statement that the conditions of subsection (a) have been met, without disclosing the subparagraph of subsection (a)(1) that is the basis for the certification.

(c) NONDELEGATION.—The authority and duties of the Attorney General under this section shall be performed by the Attorney General (or Acting Attorney General) or a designee in a position not lower than the Deputy Attorney General.

(d) CIVIL ACTIONS IN STATE COURT.—A covered civil action that is brought in a State court shall be deemed to arise under the Constitution and laws of the United States and shall be removable under section 1441 of title 28, United States Code.

(e) RULE OF CONSTRUCTION.—Nothing in this section may be construed to limit any otherwise available immunity, privilege, or defense under any other provision of law.

(f) EFFECTIVE DATE AND APPLICATION.—This section shall apply to any covered civil action that is pending on or filed after the date of enactment of this Act.

SEC. 203. PROCEDURES FOR IMPLEMENTING STATUTORY DEFENSES UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by adding after title VII the following new title:

''TITLE VIII—PROTECTION OF PERSONS ASSISTING THE GOVERNMENT

''SEC. 801. DEFINITIONS.

''In this title:

''(1) ASSISTANCE.—The term 'assistance' means the provision of, or the provision of access to, information (including communication contents, communications records, or other information relating to a customer or communication), facilities, or another form of assistance.

''(2) ATTORNEY GENERAL.—The term 'Attorney General' has the meaning give that term in section 101(g).

''(3) CONTENTS.—The term 'contents' has the meaning given that term in section 101(n).

''(4) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term 'electronic communication service provider' means—

''(A) a telecommunications carrier, as that term is defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153);

''(B) a provider of electronic communications service, as that term is defined in section 2510 of title 18, United States Code;

''(C) a provider of a remote computing service, as that term is defined in section 2711 of title 18, United States Code;

''(D) any other communication service provider who has access to wire or electronic communications either as such communications are transmitted or as such communications are stored;

''(E) a parent, subsidiary, affiliate, successor, or assignee of an entity described in subparagraph (A), (B), (C), or (D); or

''(F) an officer, employee, or agent of an entity described in subparagraph (A), (B), (C), (D), or (E).

''(5) ELEMENT OF THE INTELLIGENCE COMMUNITY.—The term 'element of the intelligence community' means an element of the intelligence community as specified or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

''(6) PERSON.—The term 'person' means—

''(A) an electronic communication service provider; or

''(B) a landlord, custodian, or other person who may be authorized or required to furnish assistance pursuant to—

''(i) an order of the court established under section 103(a) directing such assistance;

''(ii) a certification in writing under section 2511(2)(a)(ii)(B) or 2709(b) of title 18, United States Code; or

''(iii) a directive under section 102(a)(4), 105B(e), as in effect on the day before the date of the enactment of the FISA Amendments Act of 2007 or 703(h).

''(7) STATE.—The term 'State' means any State, political subdivision of a State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States, and includes any officer, public utility commission, or other body authorized to regulate an electronic communication service provider.

''SEC. 802. PROCEDURES FOR IMPLEMENTING STATUTORY DEFENSES.

''(a) REQUIREMENT FOR CERTIFICATION.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, no civil action may lie or be maintained in a Federal or State court against any person for providing assistance to an element of the intelligence community, and shall be promptly dismissed, if the Attorney General certifies to the court that—

''(A) any assistance by that person was provided pursuant to an order of the court established under section 103(a) directing such assistance;

''(B) any assistance by that person was provided pursuant to a certification in writing under section 2511(2)(a)(ii)(B) or 2709(b) of title 18, United States Code;

''(C) any assistance by that person was provided pursuant to a directive under sections 102(a)(4), 105B(e), as in effect on the day before the date of the enactment of the FISA Amendments Act of 2007, or 703(h) directing such assistance; or

''(D) the person did not provide the alleged assistance.

''(2) REVIEW.—A certification made pursuant to paragraph (1) shall be subject to review by a court for abuse of discretion.

''(b) LIMITATIONS ON DISCLOSURE.—If the Attorney General files a declaration under section 1746 of title 28, United States Code, that disclosure of a certification made pursuant to subsection (a) would harm the national security of the United States, the court shall—

''(1) review such certification in camera and ex parte; and

''(2) limit any public disclosure concerning such certification, including any public order following such an ex parte review, to a statement that the conditions of subsection (a) have been met, without disclosing the subparagraph of subsection (a)(1) that is the basis for the certification.

''(c) REMOVAL.—A civil action against a person for providing assistance to an element of the intelligence community that is brought in a State court shall be deemed to arise under the Constitution and laws of the United States and shall be removable under section 1441 of title 28, United States Code.

''(d) RELATIONSHIP TO OTHER LAWS.—Nothing in this section may be construed to limit any otherwise available immunity, privilege, or defense under any other provision of law.

''(e) APPLICABILITY.—This section shall apply to a civil action pending on or filed after the date of enactment of the FISA Amendments Act of 2007.''.

SEC. 204. PREEMPTION OF STATE INVESTIGATIONS.

Title VIII of the Foreign Intelligence Surveillance Act (50 U.S.C. 1801 et seq.), as added by section 203 of this Act, is amended by adding at the end the following new section:

''SEC. 803. PREEMPTION.

''(a) IN GENERAL.—No State shall have authority to—

''(1) conduct an investigation into an electronic communication service provider's alleged assistance to an element of the intelligence community;

''(2) require through regulation or any other means the disclosure of information about an electronic communication service provider's alleged assistance to an element of the intelligence community;

''(3) impose any administrative sanction on an electronic communication service provider for assistance to an element of the intelligence community; or

''(4) commence or maintain a civil action or other proceeding to enforce a requirement that an electronic communication service provider disclose information concerning alleged assistance to an element of the intelligence community.

''(b) SUITS BY THE UNITED STATES.—The United States may bring suit to enforce the provisions of this section.

''(c) JURISDICTION.—The district courts of the United States shall have jurisdiction over any civil action brought by the United States to enforce the provisions of this section.

''(d) APPLICATION.—This section shall apply to any investigation, action, or proceeding that is pending on or filed after the date of enactment of the FISA Amendments Act of 2007.''.

SEC. 205. TECHNICAL AMENDMENTS.

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 at the end the following:

''TITLE VIII—PROTECTION OF PERSONS ASSISTING THE GOVERNMENT

''Sec. 801. Definitions.
''Sec. 802. Procedures for implementing statutory defenses.
''Sec. 803. Preemption.''.

SA 3949. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) 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 63, strike lines 7 through 9 and insert the following:

(D) in paragraph (3), as redesignated by subparagraph (B) of this paragraph—

(i) by inserting ''and'' at the end;

(ii) by striking subparagraphs (B) and (C) and inserting the following:

''(B) the premises or property to be searched is or is about to be owned, used, possessed by, or is in transit to or from a foreign power or an agent of a foreign power;''; and

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SA 3950. Mr. BOND submitted an amendment intended to be proposed to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) 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 13, between lines 2 and 3, insert the following:

''(C) EXPEDITED REVIEW.—Not later than 48 hours after the assignment of a petition filed under subparagraph (A), the assigned judge shall conduct an initial review of the directive. If the assigned judge determines that the petition is frivolous, the assigned judge shall immediately deny the petition and affirm the directive or any part of the directive that is the subject of the petition. If the assigned judge determines that the petition is not frivolous, the assigned judge shall, within 72 hours, consider the petition in accordance with the procedures established under section 103(e)(2) and provide a written statement for the record of the reasons for any determination under this subparagraph.''.

CONGRATULATING THE STANFORD UNIVERSITY WOMEN'S CROSS COUNTRY TEAM

Ms. KLOBUCHAR. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 426, submitted earlier today.

The PRESIDING OFFICER (Mr. CASEY). The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 426) congratulating the Stanford University women's cross country team on winning the 2007 National Collegiate Athletic Association Division I Championship.

There being no objection, the Senate proceeded to consider the resolution.

Ms. KLOBUCHAR. Mr. President, I ask unanimous consent that the resolution and the preamble be agreed to en bloc, the motion to reconsider be laid upon the table, with no intervening action, 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. 426) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 426

Whereas the Stanford University Cardinal won the 2007 National Collegiate Athletic Association (NCAA) Women's Cross Country Championship on November 19, 2007, in Terre Haute, Indiana;

Whereas the Cardinal won every postseason race and maintained a top ranking throughout the 2007 season;

Whereas in 2007 the Cardinal won a Division I women's cross country title for the 3rd year in a row and the 5th time in school history;

Whereas Arianna Lambie, Lauren Centrowitz, and Katie Harrington were honored as All-Americans for their exceptional contributions during the 2007 season; and

Whereas the 2007 Stanford women's cross country team members are players Arianna Lambie, Lauren Centrowitz, Katie Harrington, Alexandra Gits, Teresa McWalters, Lindsay Allen, Kate Niehaus, Alicia Follmar, Maddie Omeara, and Lindsay Flacks, and coaches Peter Tegen and David Vidal: Now, therefore, be it

Resolved, That the Senate congratulates the Stanford University women's cross country team for winning the 2007 National Collegiate Athletic Association Division I Championship.

CONGRATULATING THE UNIVERSITY OF CALIFORNIA AT BERKELEY MEN'S WATER POLO TEAM

Ms. KLOBUCHAR. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 427, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 427) congratulating the University of California at Berkeley men's water polo team for winning the 2007 National Collegiate Athletic Association Division I Championship.

There being no objection, the Senate proceeded to consider the resolution.

Ms. KLOBUCHAR. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to en bloc, the motion to reconsider be laid upon the table, with no intervening action, 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. 427) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 427

Whereas the University of California at Berkeley (California) Golden Bears won the 2007 National Collegiate Athletic Association (NCAA) Men's Water Polo Championship, 8-6, over the University of Southern California Trojans on December 2, 2007, at the Avery Aquatics Center at Stanford University;

Whereas the California Golden Bears had a 28-4 overall record during the 2007 season;

Whereas in 2007 the California Golden Bears won a Division I men's water polo title for the 2nd year in a row and the 13th time in school history;

Whereas Michael Sharf was named the 2007 NCAA Tournament Most Valuable Player, Zac Monsees, and Jeff Tyrrell were named to the NCAA Tournament 1st team, and Spencer Warden was named to the NCAA Tournament 2nd team; and

Whereas Michael Sharf, Zac Monsees, and Mark Sheredy were named as first-team All-Americans, Adam Haley was named a second-team All-American, and Jeff Tyrrell and Spencer Warden were selected as third-team All-Americans for their exceptional contributions during the 2007 season: Now, therefore, be it

Resolved, That the Senate congratulates the University of California at Berkeley men's water polo team for winning the 2007 National Collegiate Athletic Association Division I Championship.

CONGRATULATING THE UNIVERSITY OF SOUTHERN CALIFORNIA WOMEN'S SOCCER TEAM

Ms. KLOBUCHAR. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 428, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 428) congratulating the University of Southern California women's soccer team on winning the 2007 National Collegiate Athletic Association Division I Championship.

There being no objection, the Senate proceeded to consider the resolution.

Ms. KLOBUCHAR. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to en bloc, the motion to reconsider be laid upon the table, with no intervention action, 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. 428) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 428

Whereas the University of Southern California (USC) Trojans won the 2007 National Collegiate Athletic Association (NCAA) Women's Soccer Championship by a 2-0 victory over the Florida State University Seminoles on December 9, 2007, at the Aggie Soccer Complex in College Station, Texas;

Whereas the USC Trojans, in the 2007 season, had a 20-3-2 overall record, with 13 goals allowed, 15 shutouts, and a perfect 6-0 mark in the NCAA Women's Soccer Tournament, including 5 shutouts;

Whereas the USC Trojans won a Division I women's soccer title for the first time in school history in 2007;

Whereas Marihelen Tomer and Janessa Currier each scored a goal in the championship game;

Whereas Amy Rodriguez was named the tournament's Most Outstanding Offensive Player, Kristin Olsen was named the tournament's Most Outstanding Defensive Player, and Marihelen Tomer, Kasey Johnson, and Janessa Currier were named to the All-Tournament Team;

Whereas Ashley Nick and Kristin Olsen earned All-American Honors for their exceptional contributions during the 2007 season; and

Whereas the 2007 USC women's soccer team members are players Kristin Olsen, Brittany Massro, Nini Loucks, Alyssa Dávila, Laura McKee, Kat Stolpa, Lauren Brown, Shannon Lacy, Ashli Sandoval, Jamie Petrossi, Stacey Strong, Karter Haug, Amy Rodriguez, Kasey Johnson, Jacquelyn Johnston, Janessa Currier, Ashley Nick, Marihelen Tomer, Meagan Holmes, Megan Ohai, Kelley Finch, Briana Ovbude, Amy Massey, Kate Gong, and Monique Gaxiola, and coaches Ali Khosroshahin, Harold Warren, Laura Janke, Alicia Lloyd, and Rosa Anna Tantillo: Now, therefore, be it

Resolved, That the Senate congratulates the University of Southern California women's soccer team for winning the 2007 National Collegiate Athletic Association Division I Championship.

MEASURE READ THE FIRST TIME—S. 2557

Ms. KLOBUCHAR. Mr. President, I understand that S. 2557, introduced earlier today by Senator REID, is at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will report the bill by title for the first time.

The legislative clerk read as follows:

A bill (S. 2557) to extend the Protect America Act of 2007 until July 1, 2009.

Ms. KLOBUCHAR. I now ask for its second reading, and I object to my own request.

The PRESIDING OFFICER. Objection is heard. The bill will be read for the second time on the next legislative day.

AUTHORITY TO FILE SECOND-DEGREE AMENDMENTS

Ms. KLOBUCHAR. Mr. President, I ask unanimous consent that notwithstanding the provisions of rule XXII, Senators have until 4 p.m. Monday, January 28, to file second-degree amendments.

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

ORDERS FOR MONDAY, JANUARY 28, 2007

Ms. KLOBUCHAR. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand adjourned until 2 p.m. Monday, January 28; that following the prayer and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day; that there then be a period of morning business until 3 p.m., with Senators permitted to speak therein for up to 10 minutes each, and the time equally divided and controlled between the two leaders or their designees; that at 3 p.m. the Senate resume consideration of S. 2248, the FISA legislation, and that the time until 4:30 p.m. be equally divided and controlled by the two leaders or their designees, with the final 20 minutes equally divided between the two leaders, with the majority leader in control of the final 10 minutes, and that the cloture vote on the Reid amendment not occur prior to the 4:30 cloture vote.

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

PROGRAM

Ms. KLOBUCHAR. Mr. President, at 4:30 p.m. the Senate will proceed to vote on the motion to invoke cloture on the Rockefeller-Bond substitute amendment. If cloture is not invoked on the substitute, a second vote would then occur on the motion to invoke cloture on the Reid amendment. As a reminder, the filing deadline for second-degree amendments is 4 p.m. on Monday.

As a reminder, at 9 p.m. Monday, the President will address a joint session of Congress to present his State of the Union Address.

ADJOURNMENT UNTIL MONDAY, JANUARY 28, 2008, AT 2 P.M.

Ms. KLOBUCHAR. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand adjourned under the previous order.

There being no objection, the Senate, at 1:54 p.m., adjourned until Monday, January 28, 2008, at 2 p.m.

NOMINATIONS

Executive nominations received by the Senate:

NATIONAL LABOR RELATIONS BOARD

ROBERT J. BATTISTA, OF MICHIGAN, TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD FOR THE TERM OF FIVE YEARS EXPIRING DECEMBER 16, 2009, VICE DENNIS P. WALSH.

GERARD MORALES, OF ARIZONA, TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD FOR THE TERM OF FIVE YEARS EXPIRING DECEMBER 16, 2012, VICE ROBERT J. BATTISTA, TERM EXPIRED.

DENNIS P. WALSH, OF MARYLAND, TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD FOR THE TERM OF FIVE YEARS EXPIRING AUGUST 27, 2008, VICE PETER N. KIRSANOW.

DENNIS P. WALSH, OF MARYLAND, TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD FOR THE TERM OF FIVE YEARS EXPIRING AUGUST 27, 2013. (REAPPOINTMENT)

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

LT. GEN. DOUGLAS M. FRASER, 0000

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS CHIEF OF NAVAL PERSONNEL, UNITED STATES NAVY, AND APPOINTMENT TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTIONS 601 AND 5141:

To be vice admiral

REAR ADM. MARK E. FERGUSON III, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be vice admiral

VICE ADM. JOHN C. HARVEY, JR., 0000

IN THE ARMY

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be colonel

ORLANDO SALINAS, 0000

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be colonel

DEBRA D. RICE, 0000

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be colonel

ROBERT J. MOUW, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY UNDER TITLE 10, U.S.C., SECTION 624:

To be major

RABI L. SINGH, 0000

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be commander

MICHAEL V. MISIEWICZ, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

JOHN A. BOWMAN, 0000

THE FOLLOWING NAMED OFFICER FOR TEMPORARY APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 5721:

To be lieutenant commander

JOHN A. BOWMAN, 0000

WITHDRAWALS

Executive Message transmitted by the President to the Senate on January 25, 2008 withdrawing from further Senate consideration the following nominations:

DENNIS P. WALSH, OF MARYLAND, TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD FOR THE TERM OF FIVE YEARS EXPIRING DECEMBER 16, 2009. (REAPPOINTMENT), WHICH WAS SENT TO THE SENATE ON JANUARY 9, 2007.

PETER N. KIRSANOW, OF OHIO, TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD FOR THE TERM OF FIVE YEARS EXPIRING AUGUST 27, 2008, VICE RONALD E. MEISBURG, WHICH WAS SENT TO THE SENATE ON JANUARY 9, 2007.