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House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, February 12, 2008, at 12:30 p.m.

Senate

MONDAY, FEBRUARY 11, 2008

The Senate met at 2 p.m., and was called to order by the Honorable JIM WEBB, a Senator from the Commonwealth of Virginia.

PRAYER

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

Let us pray.

Eternal God, who restores our souls, enable us to live in Your company and dwell in Your presence. Inspire our Senators. Uphold them by Your spirit and strengthen them with Your hands. When tomorrow's responsibilities loom large, remind them that You can turn their obstacles into opportunities. Forgive them when they doubt the effectiveness of spiritual weapons such as love, patience, and kindness. Teach our lawmakers that any success alien to Your way is worse than failure, and that any failure directed by Your spirit is better than victory. Give them courage and resolution to do their duty and a heart to be spent in Your service and in doing all the good they can.

We pray in the Name of our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JIM WEBB 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 bill clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, February 11, 2008.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JIM WEBB, a Senator from the Commonwealth of Virginia, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. WEBB 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, after my remarks and that of the distinguished Republican leader, we will resume consideration of S. 2248, the Foreign Intelligence Surveillance Act. Senators will debate the remaining amendments to the legislation this afternoon. There will be no rollcall votes today. However, Senators should expect to begin voting on remaining amendments tomorrow morning at about 10 a.m. Everyone should know that under the order that is now before the Senate, all debate will have to be completed today.

MEASURES PLACED ON THE CALENDAR—S. 2596, S. 2615, S. 2616, and S. 2619

Mr. REID. Mr. President, I have one small item of business. It is my understanding there are four bills due for second readings.

The ACTING PRESIDENT pro tempore. The Senator is correct. The clerk will report the bills by title for the second time.

The bill clerk read as follows:

A bill (S. 2596) to rescind funds appropriated by the Consolidated Appropriations Act, 2008, for the City of Berkeley, California, and any entities located in such city, and to provide that such funds shall be transferred to the Operation and Maintenance, Marine Corps account of the Department of Defense for the purposes of recruiting.

A bill (S. 2615) to extend the Protect America Act of 2007 for 15 days.

A bill (S. 2616) to authorize certain programs and activities in the Forest Service, the Department of Interior, and the Department of Energy, and for other purposes.

A bill (S. 2619) to protect innocent Americans from violent crime in national parks.

Mr. REID. Mr. President, I object to further proceedings with respect to these bills en bloc.

The ACTING PRESIDENT pro tempore. Objection having been heard, the bills will be placed on the calendar.

TRIBUTE TO CONGRESSMAN TOM LANTOS

Mr. REID. Mr. President, when I was elected to Congress in 1982, I had the opportunity to visit over the telephone on many occasions with a new Congressman named TOM LANTOS. He was new from California. He was very interested in my election. He helped me

raise some money for that election, made many phone calls, and reached out to me as a friend. So when I came to Washington, I had the opportunity to meet him personally. That was the beginning of the development of a real friendship.

I have traveled with TOM LANTOS overseas. He led delegations. When I was a new Senator, I traveled with him. Senator Daschle led a trip. One of the places we went was to Hungary, and we had the opportunity to have TOM LANTOS show us around Budapest. Why was that important? It was important because the Nazis waited until toward the end of the war before they moved in to disperse the Jews out of Budapest and Hungary generally.

He was one of the Jews in Budapest they captured on many occasions. He escaped the Nazis on seven different occasions. They would capture him; he would get away. He said one reason he was able to escape as much as he did was that he had long blond hair, and the Nazis didn't figure he was Hungarian. He actually took us to places where he had been captured, arrested by the Nazis in Budapest. It was a wonderful time we spent with him for 2 days in Budapest.

This morning, our country grieves the loss of truly an American hero, Congressman TOM LANTOS, chairman of the Foreign Affairs Committee in the House of Representatives. He was born in Budapest, Hungary. When he was 16 years of age, Hitler and the Nazis occupied his country. He and his family, like so many other Hungarian Jews, were captured, rounded up, beaten, and taken away, sent to labor camps. As I have indicated, he was a hard one to stay captured; he got away.

It was through him I first learned about the struggles that people have on a personal, individual basis. He was a man who protected his girlfriend, his friend Annette at the time. They were both saved by the great Swedish diplomat after whom we have streets named in Washington, DC. He was able to escape many times but not his family. All of them were killed.

All alone, a teenager, with little cause for hope, after the war, he moved through displaced persons camps. TOM LANTOS remained optimistic. He refused to give up. He spent a couple years wandering around Europe after the war.

He wrote an essay on President Franklin Roosevelt, and because of this essay, he earned an academic scholarship to study in the United States. He came on a converted World War II troop ship in 1947. He brought with him only one possession. It was a large Hungarian salami, but when he arrived, it was confiscated by Customs officials. So it is neither a cliche nor an exaggeration to say that TOM LANTOS came to America with nothing.

This ''American by choice,'' as he was fond of calling himself, earned a BA and a master's degree from the University of Washington-Seattle and a Ph.D. from the University of California. Soon after he arrived here, he married his childhood sweetheart, Annette Lantos.

For the next three decades, he and Annette lived in the San Francisco area. TOM worked as a professor in economics, an international affairs analyst, and an economist in many different areas, testifying in cases, consulting generally. In less than three decades after becoming a U.S. citizen, TOM LANTOS became a Congressman. He brought to Washington remarkable depth of knowledge and intellect and stood out as a powerhouse from the day he arrived in Washington.

As I indicated, I had the honor of serving with him in Congress, but I also served with him on the House Foreign Affairs Committee as it was then called, and, as everyone else, I found him blessed with the mind of a scholar and grace of a gentleman. TOM LANTOS could deliver a speech. He still had the Hungarian accent, but he could bring an audience to its feet. He was a great speaker.

I can recall no one in Congress who did not admire this fine man. He and Annette were always there to talk about their lives together as kids, teenagers. They had been together 60, 70 years. Raoul Wallenberg was the Swedish diplomat. Because of TOM LANTOS, there is a street named after him in Washington, DC, right by the Holocaust Memorial.

I can recall no one, Democrat or Republican, who didn't relish the opportunity to work with him. Once TOM LANTOS said:

> I like to work hard to make this a better country, to provide a just government for our people and make sure we have learned from the past.

TOM LANTOS did just that—leaving an indelible mark on issue after issue from health care, Social Security, to the environment, the budget, foreign affairs, of course, but also was his love of animals. He had a caucus in the Congress he worked on dealing only with animals. He loved animals and wanted to make sure they were treated appropriately.

He cochaired the congressional human rights caucus where he fiercely advocated the spread of liberty throughout the world. His convictions were so deeply rooted that he and four other Members of Congress were arrested in 2006 for protesting the genocide in Darfur at the Sudanese Embassy.

After years in the minority, Congressman LANTOS finally achieved his dream of chairing the House Foreign Affairs Committee, but it lasted only one year. He was diagnosed being sick right before Christmas, the first knowledge he had esophageal cancer, and he passed away within the last 24 hours.

We were all deeply saddened to hear he was sick. I was stunned when I learned he was so sick he would retire to fight cancer. The fight did not last long.

I talked today with HOWARD BERMAN, who will replace him as chair of that committee. He told me he visited TOM in Washington at his house. He said he handled his oncoming death the way he handled so many things: with great dignity and understanding.

TOM leaves behind a great family. He has two daughters, Annette, the same name as his wife, and Katrina. These are two beautiful women, as beautiful on the inside as they are on the outside. These 2 daughters gave TOM and Annette 17 grandchildren and two great grandchildren. He doted on those grandchildren. A number of us here had him contact us for things dealing with his grandchildren, making sure they got in the school they were supposed to, jobs he wanted them to get. He cared about every one of those 17 grandchildren.

Landra and I have 16 grandchildren, but we have 5 children. He had 2 daughters with 17 grandchildren.

The Lantos family is truly in our hearts today. TOM said once:

> It is only in the United States that a penniless survivor of the Holocaust and a fighter in the anti-Nazi underground could have received an education, raised a family, and had the privilege of serving the last three decades of his life as a Member of Congress. I will never be able to express fully my profoundly felt gratitude to this country.

That is what TOM LANTOS said and he meant every word of it. He benefited from the limitless opportunity America affords, but America benefited far more from the service of Congressman TOM LANTOS.

So today we pause to express our profound affection and appreciation and gratitude for this wonderful man. Congressman TOM LANTOS was a great American. His spirit will be sorely missed and his legacy never forgotten.

ORDER OF BUSINESS

Mr. REID. Mr. President, we have a very busy week ahead. We are going to finish, as I have indicated, the debate on FISA tonight. We will have a series of votes. We have about seven or eight votes we have to complete tomorrow. We have postcloture debate tomorrow. We need to finish this bill tomorrow, and we will finish it tomorrow. We will complete it.

We are going to take a run at the Indian health bill. I spoke with Senator DORGAN this morning. He said he has had a good working relationship with JON KYL and they are very close to being able to finish this bill.

We are going to bring up the conference report on intelligence authorization this week. The legislation contains an important provision that would ensure one standard of interrogation across the U.S. Government requiring the CIA to abide by the Army Field Manual dealing with interrogation techniques.

That matter has, it appears, a 60-vote point of order against it. We understand that. I hope we don't have to file

cloture on it. I recognize we have that one vote, and I am happy to arrange a convenient time for everyone to vote. We could move that very quickly, but it is important we do this work.

We have other things we are looking forward to. I am going to meet with the Republican leader as soon as we finish here to talk about other things we can do so we can be keyed up to work when we come back. We have 3 weeks when we come back after the Presidents Day recess. The last week of that work period we will be dealing with the budget. After that, we are out for the recess for Easter. Then we come back and have an 8-week work period. So we have a lot to do. We think we can do all that, plus more.

It is going to be a short but very issue-packed time this year. We have the Presidential elections that are winding down, at least the nomination process, and then we have all the senatorial elections around the country that also take a little extra time. Hopefully, we can join together and get some things done.

RECOGNITION OF THE REPUBLICAN LEADER

The ACTING PRESIDENT pro tempore. The Republican leader.

LEGISLATIVE ACCOMPLISHMENTS

Mr. MCCONNELL. Mr. President, last week was a good example of what we can accomplish when we work with instead of against each other. We were able to pass an economic growth package on an overwhelmingly bipartisan basis, which the President will sign this week. We have another chance in the current week to put up a bipartisan win by passing legislation on the Foreign Intelligence Surveillance Act. That bill, reported out of the Intelligence Committee, has broad bipartisan support. It came out of that committee 13 to 2. I am confident with the help of our friends on the other side of the aisle we can work through pending amendments, send this over to the House, and then on to the President for his signature this week before the Protect America Act expires on Saturday.

TRIBUTE TO TOM LANTOS

Mr. MCCONNELL. Mr. President, on another subject, I, too, want to talk about the passing of our good friend, TOM LANTOS. It would have been easy to excuse TOM LANTOS for turning against the world after the sufferings he endured as a young man. But the reason we admire certain people is they do not do what we would expect them to do in the face of extraordinary trials. They transcend them. And that is why a cold wind swept through the Capitol this morning when we heard that TOM had passed away.

America's history is a history of unlikely success stories, but even by American standards, TOM's was stunning. When the Nazis invaded Hungary in the frenzied last months of the war, he threw on a cadet's uniform and secretly funneled food and medical supplies to those in hiding. He later said he assumed he wouldn't make it out alive, but he ''wanted to be of some use.''

He would add many more years to be of use—not only to his beloved wife Annette and their large extended family or to the people of California's 12th District but to suffering and oppressed people. His own bitter experiences led him to make no distinction at all among those who were denied their basic human rights. He would always be grateful for the honor of being able to help them. Well into his seventies, he said he still got goosebumps looking up at the flag on the Capitol on his morning walk to work.

TOM and I had our differences on domestic issues, but it was a great mark of his commitment to human rights that he frequently joined Republicans when these rights were at stake. He worked with the Republicans to introduce a resolution expressing solidarity with Israel in its fight against terrorism. He worked with the Republicans to get funds to fight AIDS around the world. Every year since 2003, he and I were the House and Senate sponsors of the Burmese Freedom and Democracy Act.

We were also united in our strong support for Israel. We took leading roles in the House and Senate on the Palestinian Anti-Terrorism Act. And we were united in our concerns about Iran. TOM introduced the Iran Counterproliferation Act in the House. I cosponsored it in the Senate.

When TOM was diagnosed with a life-threatening illness last month, he responded again in an extraordinary way. He responded with gratitude. He said:

> It is only in the United States that a penniless survivor of the Holocaust and a fighter in the anti-Nazi underground could have received an education, raised a family, and had the privilege of serving the last three decades of his life as a Member of Congress.

We know TOM's decision to retire was especially painful, since he had just last year been named chairman of the House Committee on Foreign Affairs, a committee he had served on for 26 years. It was a position he said he had been preparing for his whole life.

With his distinctive accent, his grace, and his deep learning—he spoke five languages and devoted 6 hours a day to reading books and magazines—TOM always gave the impression of being a true gentleman of the House, and he was. But he was just as tough. TOM LANTOS accomplished something few people do in life: he committed himself to an ideal and followed through on it until the end. He gave it everything he had, and America admires him for it.

I want to express Elaine's and my deepest sympathies to Annette. We got to know TOM and Annette on several trips abroad, which is a way you make friendships around here, both across the aisle and in the other body. Annette and TOM lived near us here on Capitol Hill. I recall frequently seeing Annette out walking the dog. So we grieve for her and their daughters and the entire extended Lantos family on their loss.

Mr. President, I yield the floor.

Mr. HATCH. Mr. President, I want to spend a few moments to eulogize our old friend, the chairman of the House Foreign Affairs Committee, TOM LANTOS. He has been one of my dear friends all these years. I have been here 31 years, and he was here 26 years. He and Annette have really been wonderful people in Elaine's and my life.

Mr. President, this morning began sadly, as the two leaders have said, with the news of the death of Congressman TOM LANTOS, one of the giants among the Democrats in the House, and, frankly, among all Members of Congress during the last 28 years. Congressman LANTOS had been diagnosed with cancer a few months ago, and had recently announced he would not run for a 14th term for the 12th District of California, which he so ably served since 1980.

TOM LANTOS led a remarkable life. A Hungarian Jew, he lived what he said was a happy childhood until the Hungarian fascist allies of Hitler brought the Holocaust to Hungary. Through most of the war, he was interned in various forced labor camps, some from which he escaped, and was at least once recaptured, following a beating that he later said, ''I was pleasantly surprised to survive.''

After a final escape, he spent the remainder of the war in hiding, protected, as so many Hungarian Jews were, by Raoul Wallenberg, the man who risked his life to protect as many of Hungary's Jews as he could and who vanished into the Soviet camps at the end of the war. One of the great days of my life was to pay homage to Raoul Wallenberg at the monument in Europe.

Six hundred thousand Hungarian Jews perished in the Holocaust, including TOM LANTOS's family. One of the first initiatives of Congressman LANTOS upon coming to the House of Representatives in 1980 was to pass legislation granting Raoul Wallenberg U.S. citizenship.

TOM LANTOS was, in his words, ''an American by choice,'' and to know him was to see that every day of his life he embraced the opportunities an immigrant can find in this great country. He arrived penniless to this country, as my two colleagues have said. According to his biography, his only possession was ''a precious Hungarian salami,'' which was confiscated upon arrival, as my colleagues mentioned. But with a scholarship and hard work, he earned a Ph.D. in economics and

taught at San Francisco's State University for almost three decades, developing, during that time, his credentials as a commentator on world affairs.

TOM LANTOS brought to the House his passionate patriotism and the drive of a survivor. When people would comment on the demands of his work, which included regular travel to his constituency 3,000 miles away, his global travels as a Member of the House Foreign Affairs Committee, which he recently chaired, and the hectic pace of his other congressional assignments, he would be quick to remind us that this was nothing in comparison to what he had faced as a young man.

He founded the House Human Rights Caucus, a platform which he used to highlight the human rights abuses around the world, and with which he became inextricably associated. For many of us in Congress and for many oppressed through the world, Congressman LANTOS was the chairman for human rights.

He was a Democrat who believed in the use of American power for good and who understood the nuances of subtle, as well as confrontational, diplomacy.

For example, he kept trying to get a visa to visit Tehran because he believed there was always room to talk with enemies as well as friends. But when asked what he would say to the dictators in Tehran, he was less than subtle:

> I will tell the Iranians the truth—that it's a great country and they need to be reintegrated into the family of civilized nations and that they must give up their lunatic notions.

Less than subtle, to be sure, but truthful. It is hard to disagree with this view, Mr. President.

TOM LANTOS also recognized that diplomacy could fail and the use of the U.S. military could achieve noble ends. He was a strong supporter of the military during the Cold War, supported military assistance to Israel, urged President Clinton to lead NATO forces against Milosevic's genocide, and supported our interventions in Iraq, although, to be fair to him, he was critical, as many of us have been, about the implementation of our invasion of Iraq.

The point is, TOM LANTOS represented the wing of the Democratic Party that kept central our national security concerns, that recognized our duty in the world, and accepted that the use of force is sometimes required. This is the wing of the Democratic Party that needs to survive if that party is to remain relevant to the events in the world that will continually shape us.

I am honored to have been a friend of TOM LANTOS for decades. We loved each other. We showed that love repeatedly over the years. He was a dear friend, and I want everybody to know just how deeply I felt about him. Our staffs worked together well, and he always had my admiration and respect.

I will never forget a tour he gave me and Senators REID and Daschle of the old Jewish ghetto in Budapest when our separate codels happened to be in that city at the same time in 1996. Later, he gave us a personal tour of the magnificent Hungarian Parliament building. One of the first post-Communist governments was in power, and they so highly regarded TOM LANTOS for his heritage, as well as his anti-Communist stance throughout his life, that he was granted free access throughout the building. He even knew where to turn the lights on.

The prayers and thoughts of Elaine and I go out to Annette, his beautiful wife of 58 years, whom he married in California, but who, like himself, was a survivor of the Holocaust in Hungary and was actually a childhood sweetheart. The fact that they loved each other as long as they have, that they came from similar backgrounds, and worked together daily throughout their lives only makes her loss that much sadder.

Our condolences go out to her and their two wonderful children. And I believe there are 18 grandchildren. But the death of TOM LANTOS is a great loss, as well, to his constituents, to his colleagues in the House, to his party, and to all of us in Congress. It is a loss to our great Nation and to all those who strive in solidarity for the cause of human rights.

TOM LANTOS was slight of build, but he was a giant. He was a moral force who used the authority of a survivor from the Holocaust, of an American immigrant, and of a scholar and leader to show the great institution of Congress how it can lead in a dangerous and often immoral world.

Elaine and I loved TOM, we love Annette, and we hope we can be of some assistance to Annette and her family as we move into the future. But we will miss TOM very badly. What a great and noble man who suffered so much for freedom.

I thank the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

Mr. KYL. Mr. President, that was a very fine tribute from the Senator from Utah to a very fine man. I had the honor of serving with TOM LANTOS in the House of Representatives, and I certainly join all others who mourn his death today.

I wonder if I might ask the Senator from California—I think she would like to make a FISA presentation. I understand the Senator would like to have about an hour. Is that how long she plans to speak?

Mrs. FEINSTEIN. I thank the Senator. I would like to say a few words about TOM LANTOS, he was a friend, and also speak on two amendments on the Foreign Intelligence Surveillance Act.

Mr. KYL. I wonder if, in the spirit the Senator and I have frequently resolved matters, I have about 10 minutes of presentation. Perhaps if we can enter into an agreement, you proceed and make your comments about Representative LANTOS, I will speak for my 10 minutes or so, with the understanding that you then conclude the remainder of your remarks. We could propose that in the form of a unanimous consent agreement. Would that be acceptable?

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

The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I had the great pleasure of knowing TOM LANTOS as a friend and as a mentor. I have known him for many years. I last spoke with him about 3 weeks ago, maybe 4, and he said he was going to forego treatment, that he was ready for whatever would come, that he and Annette were going to remain in Washington, that he was very content with his medical treatment at Bethesda, and he did not believe he would try anything heroic.

Those of us who know, know cancer of the esophagus is devastating and unrelenting. From that point on, I began to think quite a bit about TOM LANTOS. I thought back when Yahoo had the confrontation with China and did not stand up but gave in to China, and TOM stood on his feet, with amazing blue eyes and his gray hair, and said: They are moral pygmies.

He called it as it was. He stood for human rights. After 30 years in the House, he became Chairman of the Foreign Relations Committee. Regretfully, his life ended before he had much more time than a year in that position.

TOM LANTOS represented the district directly to the south of my city, San Francisco. He was a wonderful Representative. I watched him over the past 30 years as time went on. I watched his 18 grandchildren grow. I remember meeting them in the airport in Denver. I do not know whether Members know this; some of them were home schooled, and they went to college at the age of 14. That is pretty amazing; all high achievers, all very close, a tight family; a wife who was his childhood sweetheart.

This does not often happen. But then if you think back to Hungary in those days, and you think back to a young, blue-eyed man in the camps, escaping at night, being caught, coming back, leaving again, becoming part of Raoul Wallenberg's group, coming to this country, becoming educated and all the greatness of the country opening before him.

He truly measured up to the greatness of America. I was very proud to call TOM LANTOS a friend and a mentor. He will be missed. He will be missed in his district, he will be missed in California, and he will be missed in the United States.

I yield the floor.

RESERVATION OF LEADER TIME

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

FISA AMENDMENTS ACT OF 2007

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

The bill clerk read as follows:

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

Pending:

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

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

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

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

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

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

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

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

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

Mr. KYL. Mr. President, today we are debating the amendments to the Foreign Intelligence Surveillance Act. I am going to say a few words about why Congress ought to provide legal relief to those private entities that have aided the United States in our war against al-Qaida and, in particular, one of the amendments that will be voted on tomorrow.

I begin by quoting a passage in an opinion by Justice Cardozo, from the time when he was the chief judge of the New York Court of Appeals. In the 1928 decision Baggington v. Yellow Taxi Corp., this is what Justice Cardozo had to say about the legal immunities that should be provided to private parties that assist law enforcement efforts:

The rule that private citizens acting in good faith to assist law enforcement are immune from suit ensures that the citizenry may be called upon to enforce the justice of the State, not faintly and with lagging steps, but honestly and bravely and with whatever implements and facilities are convenient and at hand.

We need to encourage citizen involvement in our efforts against al-Qaida. We know that good intelligence is the best way to win the war against those terrorists, and if we want to monitor al-Qaida, we need access to the information which is available through the telecommunications companies.

We asked them for help, and they provided that help at a critical time, after 9/11. We need to know, for example, whether al-Qaida terrorists are planning other attacks against us. When we ask parties to assist us, such as those telecommunications companies that assisted us after 9/11, we want them to reply not faintly and with lagging steps but, rather, in Justice Cardozo's words: We want them to answer the call honestly and bravely and with whatever implements and facilities are conveniently at hand.

In today's technological world, what that means is that when we ask these telecommunications companies for their support, they provide the incredibly intricate and advanced technology at their disposal to assist us in understanding what communications al-Qaida is having with each other.

Now, tomorrow we are going to be voting on some amendments which, in my view, weaken and in one case would actually strip the liability protections the Intelligence Committee bill provides to such private parties. I think these amendments are unwise.

Certainly, I urge my colleagues to reject them. Let me focus on one of them today, one that relates to a subject called substitution. The idea is that while it would be unfair to hold these telecommunications companies responsible for coming to the aid of the Government in its time of need, that they should be immune from liability, that we should somehow substitute the U.S. Government in their place and that would somehow balance the equities here of having the matter litigated and yet protecting the telecommunication companies.

There are several reasons why this simply does not work. In the first place, it would still be required to reveal the identity of the company involved. Part of this entire matter is protecting the identity of the company so it does not lose business around the world and so it is not subject to the kind of abuse that would otherwise occur.

In addition to that, full discovery could be conducted. In other words, depositions could be taken, interrogatories could be served. In every respect, the company is not protected from the legal process, it is simply not liable at the end of the day; it would only be the Government that would be liable.

But the individuals of the company and the company itself would still be subject to all the rigors of litigation which we are trying to protect them from. The litigation does not go away. In addition to that, a method has been set up to litigate this before the FISA Court, which misunderstands what the FISA Court is. The FISA Court is not like the Ninth Circuit Court of Appeals. The FISA Court is individual judges called upon primarily to issue warrants that permit the Government to engage in its intelligence operations.

So you do not have a court sitting the way you do in a typical Federal district court or a circuit court. This FISA Court would presumably have to litigate whether the companies are entitled to substitution, so it is not a free substantiation but, rather, if they can prove that they are entitled to the substitution.

Finally, the point of having this liability protection for the Government's purpose is first and foremost because of the need to protect its sources and methods of intelligence collection from the enemy or from the public at large. Of course, if you still have the litigation ongoing, if you still have the process, it is just that Party A is liable rather than Party B.

You still have the threat that sources and methods could be compromised, information relating to the activity could be disclosed, as it has in the current debate. We should remind ourselves that what we are debating publicly is a system of collection that has been, to some extent, defined by public discussion of matters that were and should have been totally classified.

We have given the enemy a great deal of information about how to avoid the kind of collection that is vital to our efforts. That is the kind of thing we are trying to prevent. So substitution, simply substituting the Government as a party for the phone companies does not solve that problem either. The bottom line is, that as with these other amendments, the so-called substitution amendment is not a good amendment, it should be rejected, and I hope at the end of the day we will have been able to vote it down.

Let me conclude by repeating some of the things the Statement of Administrative Policy stated in quoting the Intelligence Committee's conclusions in its report.

Al-Qaida has not ceased to exist in years since the September 11 attacks. It still exists and it still seeks the wholesale murder of American civilians. We know how devastating such attacks can be. And we know that once an attack is underway—once a plane has been hijacked, or a bomb has been assembled—it is too late. We need to stop al-Qaida attacks before they are executed, before they are being carried out. We need to act at a time when such attacks are still being planned or when al-Qaida terrorists are still being prepared.

To gather this type of intelligence—the intelligence needed to stop a terrorist attack—we will need the assistance of private parties. Information about al-Qaida's communications, its travel, and other activities often is in the hands of private parties. If we want to monitor al-Qaida we will need access to information. And when telecommunications companies or others are asked for their help in tracking, for example, an al-Qaida cell that may be operating in this country, we do not want those parties to reply ''faintly and with lagging steps.'' Rather, in

Justice Cardozo's words, we want them to answer the call for assistance ''honestly and bravely and with whatever implements and facilities are convenient at hand.''

The Senate Intelligence Committee bill contains provisions that ensure that results that future requests for assistance will be met ''honestly and bravely,'' rather than with fear of becoming embroiled in litigation. Tomorrow the Senate will be voting on amendments that seek to strip out or weaken the legal protections that the Intelligence Committee bill provides to private parties that assist anti-terrorism investigations. These amendments are unwise, and I would strongly urge my colleagues to reject them.

As the Statement of Administration Policy on the Judiciary Committee bill notes, the failure to provide strong legal protections to private parties would undermine U.S. efforts to respond to and stop al-Qaida in two ways: first, it allows the continuation of litigation that has already resulted in leaks that have done serious damage to U.S. counterterrorism efforts. This litigation is inherently and inevitably damaging to U.S. efforts to monitor al-Qaida's communications. As one Intelligence Committee aide aptly characterized the situation, allowing this litigation to go forward would be the equivalent of allowing the legality of the Enigma code-breaking system to be litigated during World War II.

In addition, the failure to provide protection to third parties who have assisted the United States would undermine the willingness of such parties to cooperate with the Government in the future. And such cooperation is essential to U.S. efforts to track al-Qaida. As the SAP on this bill further explains:

In contrast to the Senate Intelligence Committee bill, the Senate Judiciary Committee substitute would not protect electronic communication service providers who are alleged to have assisted the Government with communications intelligence activities in the aftermath of September 11th from potentially debilitating lawsuits. Providing liability protection to these companies is a just result. In its Conference Report, the Senate Intelligence Committee ''concluded that the providers . . . had a good faith basis for responding to the requests for assistance they received.''

The Committee further recognized that ''the Intelligence Community cannot obtain the intelligence it needs without assistance from these companies.'' Companies in the future may be less willing to assist the Government if they face the threat of private lawsuits each time they are alleged to have provided assistance.

The Senate Intelligence Committee concluded that: ''The possible reduction in intelligence that might result from this delay is simply unacceptable for the safety of our Nation.'' Allowing continued litigation also risks the disclosure of highly classified information regarding intelligence sources and methods. In addition to providing an advantage to our adversaries by revealing sources and methods during the course of litigation, the potential disclosure of classified information puts both the facilities and personnel of electronic communication service providers and our country's continued ability to protect our homeland at risk. It is imperative that Congress provide liability protection to those who cooperated with this country in its hour of need.

The ramifications of the Judiciary Committee's decision to afford no relief to private parties that cooperated in good faith with the U.S. Government in the immediate aftermath of the attacks of September 11 could extend well beyond the particular issues and activities that have been of primary interest and concern to the Committee. The Intelligence Community, as well as law enforcement and homeland security agencies, continue to rely on the voluntary cooperation and assistance of private parties. A decision by the Senate to abandon those who may have provided assistance after September 11 will invariably be noted by those who may someday be called upon again to help the Nation.

Many members of the Senate Majority insist that there be stringent congressional oversight of these intelligence-collection programs. No one disputes that point. All agree that we need oversight over the intelligence agencies. That is why this Congress and previous Congresses have agreed on a bipartisan basis to create robust oversight of U.S. intelligence gathering, even when such intelligence gathering is directed at foreign targets. The agencies executing wiretaps and conducting other surveillance must report their activities to Congress and to others, so that opportunities for domestic political abuse of these authorities are eliminated.

I conclude by asking: what is the Senate's goal? Do we want to allow our intelligence agencies to be able to obtain the assistance of telecommunications companies and other private parties when those agencies are investigating al-Qaida? If so, then we need to create a legal environment in which those companies will be willing to cooperate—an environment in which their patriotic desire to assist the United States does not conflict with their duties to their shareholders to avoid expensive litigation.

We need to write the laws to ensure against the domestic political abuse of surveillance authority, and we have done that. The question now is whether we want to give our intelligence agents the tools that they need to track al-Qaida. We should do so, and in order to do so, we must defeat amendments that would weaken the bill's legal protections for private parties who assist the government's efforts against al-Qaida.

To conclude, we obviously want to write our laws to ensure that in intelligence collection, and any kind of this activity, the rights of American citizens are fully protected, that we protect against domestic political abuse of surveillance authority. We have done that.

The question now is whether we want to give our intelligence agencies the tools they need to track al-Qaida and other terrorists. We should do so, and in order to do so, we have to defeat amendments that would weaken the Intelligence Committee bill, which lays out a good process for balancing the equities involved and ensuring that we have provided not only the Government agencies what they need to do the job we have asked them to do but also to protect the private parties whom the Government has asked to volunteer to help and which up to now they have been able to do because they felt that what they did would be protected from liability.

Without that liability protection, the kind of negative results would occur which I have identified.

So I hope that when this substantiation amendment comes before us, we will vote it down and that we will also reject the other amendments which are designed to weaken the Intelligence Committee FISA bill.

Mr. HATCH. Would the Senator from California yield for a unanimous consent request?

Mrs. FEINSTEIN. I will yield.

Mr. HATCH. I ask unanimous consent that I be permitted to speak immediately following the Senator from California.

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

AMENDMENT NO. 3910

Mrs. FEINSTEIN. Mr. President, I rise to speak on two of the amendments in the list of amendments to be voted on tomorrow. The first is amendment 3910. That relates to making the Foreign Intelligence Surveillance Act the exclusive authority for conducting electronic surveillance. This is cosponsored by Chairman ROCKEFELLER, Chairman LEAHY, by Senators NELSON of Florida, WHITEHOUSE, WYDEN, HAGEL, MENENDEZ, SNOWE, SPECTER, SALAZAR, and I ask unanimous consent to add Senator CANTWELL to that list.

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

Mrs. FEINSTEIN. For the information of my colleagues, I do not intend to modify this amendment, and so I will be seeking a vote on the amendment as it is currently drafted.

I voted in support of the FISA bill as a member of the Intelligence Committee. But I made clear in that committee, as well as in statements called additional views, which are attached to the report of the bill, that I coauthored with Senators SNOWE and HAGEL that changes were necessary.

In the Judiciary Committee, we were able to secure improvements to the Intelligence Committee's bill that I believed were needed. Most importantly,

the Judiciary Committee added strong exclusivity language similar to the amendment I have now before the Senate.

Unfortunately, the Judiciary package was not adopted on the floor. So the amendments we present are designed to restore the exclusivity language I believe is vital to FISA and goes to the heart of the debate on this bill, which is whether this President or any other President must follow the law.

With strong exclusivity language, which is what we try to add, we establish a legislative record that the language and the intent of the Congress compels a President now and in the future to conduct electronic surveillance of Americans for foreign intelligence purposes within the parameters and confines of this legislation.

The amendment makes the following important changes to the bill:

First, it reinforces the existing FISA exclusivity language in title 18 of the U.S. Code by restating what has been true in the statute since 1978—that FISA is the exclusive means for conducting electronic surveillance, period. So legislative intent is clear.

Second, the amendment answers the so-called AUMF; that is, the authorization to use military force loophole used by the President to circumvent FISA.

What is that? The administration has argued that the authorization of military force against al-Qaida and the Taliban implicitly authorized warrantless electronic surveillance. This is an argument embroidered on fiction, made up from nothing.

Nonetheless, the executive has chosen to use it.

Under our amendment, it will be clear that only an express statutory authorization for electronic surveillance in future legislation shall constitute an additional authority outside of FISA. In other words, if you are going to conduct surveillance outside of FISA, there has to be a law that specifically enables you to do so. Otherwise, you stay within FISA.

Third, the amendment makes a change to the penalty section of FISA. Currently, FISA says it is a criminal penalty to conduct electronic surveillance except as authorized by statute. This amendment specifies that it is a criminal penalty to conduct electronic surveillance except as authorized by FISA or another express statutory authorization. This means that future surveillance conducted under an AUMF or other general legislation would bring on a criminal penalty. So follow the law or else there is a criminal penalty.

Fourth, the amendment requires more clarity in a certification the Government provides to a telecommunications company when it requests assistance for surveillance and there is no court order. Henceforth, the Government will be required to specify the specific statute upon which the authority rests for a request for assistance.

I believe our amendment will strengthen the exclusivity of FISA. I believe it is critical. Without this strong language, we run the risk that there will be future violations of FISA, just as there have been present violations of FISA. History tells us that this is very possible.

Let me go into the history for a minute because it is interesting how eerily similar events of the past were to events of today. Let me tell this body a little bit about something called Operation Shamrock.

In its landmark 1976 report, the Church Committee disclosed, among other abuses, the existence of an Operation titled ''Shamrock.'' What was Shamrock? It was a program run by the NSA and its predecessor organizations from August of 1945 until May of 1975. That is, for 30 years, the Government received copies of millions of international telegrams that were sent to, from, or transiting the United States. The telegrams were provided by major communications companies of the day—RCA Global and ITT World Communications—without a warrant and in secret. A third company, Western Union International, provided a lower level of assistance as well.

It is estimated that at the height of the program, approximately 150,000 communications per month were reviewed by NSA analysts. So telegrams coming into the country and going out of the country all went through NSA.

According to the Church Committee report, the companies agreed to participate in the program, despite warnings from their lawyers, provided they received the personal assurance of the Attorney General and later the President that they would be protected from lawsuit.

The NSA analyzed the communications of Americans in these telegrams and disseminated intelligence from these communications in its reporting.

If all of this history sounds eerily familiar, it should. The parallels between Shamrock and the Terrorist Surveillance Program are uncanny, especially when one considers that FISA was passed in 1978 as a direct result of the Church Committee's report. Yet here we are, same place, again today.

Almost immediately after the Church Committee's report was unveiled, Congress went to work on what is now the Foreign Intelligence Surveillance Act to put an end to warrantless surveillance of Americans. FISA states that when you target surveillance on Americans, you need a court order, period.

Some of my colleagues argue that FISA was not the exclusive authority since 1978 and that the President has inherent article II authorities to go around FISA.

On the first point, the legislative history and congressional intent from 1978 is clear: Congress clearly intended for FISA to be the exclusive authority under which the executive branch may conduct electronic surveillance.

Let me read what the Congress wrote in 1978 in report language accompanying the bill:

> [d]espite any inherent power of the President—

That means despite any article II authority—

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

That is the report language written in 1978.

The congressional debate also took on the Supreme Court's decision in the Keith case in which the Court ruled that since Congress hadn't enacted legislation in this area at that time, then it simply left the Presidential powers where it found them. Right? Wrong. In response to the Court's decision, the 1978 congressional report stated the following:

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

Clear. Distinct. Definitive.

It is important that the record here today clearly reiterates that in 1978 there was an unambiguous position that FISA was the exclusive authority under which electronic surveillance of Americans could be conducted. This was in the bill language and the report language as passed by the 95th Congress.

But FISA's exclusivity was recognized not just by the Congress. The executive branch also agreed that FISA was controlling and that any and all electronic surveillance would be conducted under the law.

President Carter at the time issued a signing statement to the bill. This wasn't a signing statement like we see today. It was not used to express the President's disagreement with the law or his intent not to follow part of the law. Rather, President Carter used his statement to explain his understanding of what the law meant.

Here it is in direct quote:

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

Again, clear, distinct, definitive.

By issuing this statement, President Carter and the executive branch affirmed not only Congress's intent to limit when the executive branch could conduct surveillance, but it ratified that Congress had the power to define the parameters of executive authority in this area.

So there was an abuse—Operation Shamrock—similar to this incident with the telecoms today, followed by a clear act of Congress in passing FISA,

followed by a clear statement of the executive affirming the meaning of FISA. Together, these acts were taken to end the exercise of unchecked executive authority. Here we are, back in 1978 today.

Despite the 1978 language and Congress's clear willingness to amend FISA to make it apply to the new war against terrorism early in its tenure, the Bush administration decided that it would act outside the law. This was a conscious decision. Not one part of FISA was ever tried to be put under the auspices of the FISA law and the Foreign Intelligence Surveillance Court. That was both wrong and unnecessary.

To justify this mistake, the Department of Justice developed a new convoluted argument that Congress had authorized the President to go around FISA by passing the authorization for use of military force against al-Qaida and the Taliban. Can anybody really believe that? This, too, was wrong. I was there. I sat in most meetings. I defy anybody in this body to come forward and tell me privately or publicly that going around FISA was ever contemplated by the AUMF. In fact, it was not. It was never even considered.

Apparently not confident of its AUMF argument, the administration decided to also assert a broad theory of Executive power, premised on Article II of the Constitution. These are the powers of the President.

Under this argument, the Bush administration asserted that despite congressional action, the President has the authority to act unilaterally and outside of the law if he so chooses, simply by virtue of his role as Commander in Chief. While Presidents throughout history all tried to expand their power, this new twist would place the President of the United States outside the law. Taken to its logical conclusion, if the Congress cannot enact statutes that the President must follow, then he is above the law. I disagree with that position. I do not believe anyone can be above the rule of law. But I am not the only one.

Justice Jackson described it best in his Youngstown opinion. In 1952, against the backdrop of the Korean war, the Supreme Court addressed the issue of when congressional and executive authorities collide in the Youngstown Sheet and Tube Company v. Sawyer. The question presented in Youngstown was whether President Truman was acting within his constitutional powers when he issued an order directing the Secretary of Commerce to take possession of and operate most of the Nation's steel mills. In other words, the Government was going to take over the steel mills.

The Truman administration argued that the President was acting within his inherent power as Commander in Chief in seizing the steel mills, since a proposed strike by steelworkers would have limited the Nation's ability to produce the weapons needed for the Korean war.

The Bush administration today is making the very same argument. It is asserting that the President's constitutional authorities as Commander in Chief trump the law. However, in a 6-to-3 decision in Youngstown, the Supreme Court held that President Truman exceeded his constitutional authority. Justice Jackson authored the famous concurring opinion, setting forth the three zones into which Presidential actions fall.

The first zone: When the President acts consistently with the will of Congress, the President's power is at its greatest.

Two: When the President acts in an area in which Congress has not expressed itself, there is an open question as to the scope of congressional and Presidential authority. So we know the first two.

The third zone: When the President acts in contravention of the will of Congress, Presidential power is at its lowest.

That is where we are right now. Clearly, President Bush acted outside of the scope of the law. According to Youngstown, his power is at its lowest. The only way to test that is to bring a case before the Supreme Court again. But the fact the Court ruled against Truman in a situation of war—in a situation where a strike would have shut down the steel mills, when Truman tried to use his commander in chief authority to seize the steel mills, the Court said: You cannot do that, and then it went on to define the different zones of Presidential authority. It is a big opinion, and it is one which is often quoted in our judicial hearings on Supreme Court nominees.

Justice Jackson also wrote:

> When the President takes measures incompatible with the expressed or implied will of Congress—

Which is this case—

> his power is at its lowest ebb, for then he can rely only on his constitutional powers, minus any constitutional powers of Congress over the matter.

Now, this is key, this last part: Although Justice Jackson's opinion was not binding at the time, the Supreme Court has since adopted it as a touchstone for understanding the dimensions of Presidential power. The Youngstown case is as important today as it was then.

That is why I am proposing this amendment. I want to make it crystal clear, and my cosponsors want to make it crystal clear, that Congress has acted to prohibit electronic surveillance on U.S. persons for foreign intelligence purposes outside of FISA, and this amendment does that.

One day this issue is going to be before the Court, and on that day I want the Justices to be able to go back and see the legislative intent; the legislative intent as it was in the Judiciary Committee, the legislative intent as it is here on the floor, and the legislative intent of this amendment to strengthen the exclusivity parts of FISA.

What we have here is a case of history repeating itself: abuse followed by a clear statement from Congress, then another abuse with the Terrorist Surveillance Program. It too should be followed by a clear statement from Congress.

Now is the time for the Congress of the United States to reassert its constitutional authorities and pass a law that clearly and unambiguously prohibits warrantless surveillance outside of FISA. Now is the time to say that no President, now or in the future, can operate outside of this law.

I mentioned that in 2001 the President chose to go outside of FISA. In January of 2007, after the Intelligence Committee learned about the full dimensions of the law, guess what. The executive branch brought it to the Court and bit by bit put the program under the Foreign Intelligence Surveillance Court. Today, the entire program is within the parameters of the Foreign Intelligence Surveillance Court.

What I am saying to this body is it was a terrible misjudgment not to do so in 2001, because I believe the Foreign Intelligence Surveillance Court would have given permission to the program. So I believe this amendment is absolutely crucial, and I very much hope it will pass tomorrow.

Now, if I may, I wish to speak in support of my amendment to replace the full immunity in the underlying bill with a system of FISA Court review. This is amendment No. 3919. I am joined in this amendment by Senators BILL NELSON, BEN CARDIN, and KEN SALAZAR. I ask unanimous consent to add Senator WHITEHOUSE as a cosponsor, and I know that Senator WHITEHOUSE wishes to come to the floor to speak to this amendment.

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

Mrs. FEINSTEIN. This amendment is about allowing a court to review the request for immunity for the telecommunications companies, but in a way that is carefully tailored to meet this unique set of suits. It allows for the good faith defense if the companies reasonably believed the assistance they provided the Government was legal.

As Members know, the FISA Court comprises 11 Federal district court judges appointed by the Chief Justice. It has heard thousands of applications for FISA warrants and has recently made determinations on the executive's procedures under the Protect America Act. In January of 2007, the Court put the entire Terrorist Surveillance Program under its jurisdiction. Its judges and its staff are experts in surveillance law, and the Court protects national security secrets.

Let me describe the amendment briefly. Under this amendment, the FISA Court is directed to conduct a tailored, three-part review.

Part one: The FISA Court will determine whether a telecommunications company actually provided the assistance to the Federal Government as

part of the Terrorist Surveillance Program. If not, those cases are dismissed. So if you didn't give help and you have litigation pending, the case is dismissed, period.

Second: If assistance was provided, the Court would review the request letters sent from the Government to the companies every 30 to 45 days. The FISA Court would then have to determine whether these letters, in fact, met the requirements of the applicable law. There is law on this. It is part of FISA. It is 18 U.S.C. 2511. If they met the requirements, the cases against the companies are dismissed.

Now, let me tell my colleagues what the law says. Sections 2511(2)(a)(ii)(A) and (ii)(B) state that companies are allowed to provide assistance to the Government if they receive a certification in writing by a specified person (usually the Attorney General or a law enforcement officer specifically designated by the Attorney General).

The certification is required to state that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required by the Government. Now that is what the law says. It is short, it is succinct, it is to the point.

The question is: Do the specifics of the actual documents requesting assistance meet the letter of this law with respect to contents and timing. If they did, the companies would be shielded from lawsuits. Why? Because that is the law. That is what the law says. No one would want us not to follow the law.

Finally, in any case where the defendant company did provide assistance but did not have a certification that complied with the requirements I have read, the FISA Court would assess whether the company acted in good faith, as has been provided under common law.

There are several cases of common law that describe what is called the good faith defense—the U.S. v. Barker, Smith v. Nixon, Halperin v. Kissinger, and Jacobson v. Bell Telephone. So there is common law on the subject.

There would be at least three lines of defense for defendant companies in this situation. They could argue that the assistance was lawful under the statutes other than 18 U.S.C. 2511—the law I have cited; that they believed, perhaps wrongly, that the letters from the Government were lawful certifications; or that complying with the request for assistance was lawful because the President had article II authority to conduct this surveillance. They could make their arguments, and the plaintiffs, against the defendant companies, could make their arguments.

In this case, the FISA Court would then determine whether the company acted in good faith and whether it had an objectively reasonable belief that compliance with the Government's written request or directives for assistance were lawful. If the Court finds that the company met this standard, the lawsuits would be dismissed.

I believe this very narrow three-part test strikes the right balance between the competing interests in the immunity debate. This amendment neither dismisses the cases wholesale, nor does it allow the cases to proceed if the companies had an objectively reasonable belief that their compliance was lawful.

Let me point out for a moment some of the history relevant to this issue.

First: Requests for assistance from the Government to the telecoms came about 1 month following the worst terrorist attack against our Nation. That is fact. There was an ongoing acute national threat. That is a fact. The administration was warning that more attacks might be imminent. That was fact. And we now know that there was a plot to launch a second wave of attacks against the west coast.

Two: Certain telecom companies received letters every 30 to 45 days from very senior Government officials. That is fact. I have read them. The letters said the President had authorized their assistance. That is fact. They also said the Attorney General had confirmed the legality of the program. That is fact. These assurances were from the highest levels of the Government.

Third: Only a very small number of people in these companies had the security clearances to be allowed to read the letters, and they could not consult others with respect to their legal responsibility, nor are these telecommunication company executives expert in separation of powers law—either article II legal arguments or the flawed AUMF argument.

Fourth: As I mentioned, common law has historically provided that if the Government asks a private party for help and makes such assurances that help is legal, the person or company should be allowed to provide assistance without fear of being held liable. That is true. Common law does this. One would think this would be especially true in the case of protecting our Nation's security.

Fifth, taking no legislative action on the pending cases ignores the fact that these companies face serious, potentially extraordinarily costly litigation but are unable at the present time to defend themselves in court. The Government has invoked the state secrets defense.

Now, this is a sort of insidious defense. It places the companies in a fundamentally unfair place. Individuals and groups have made allegations to which companies cannot respond. They cannot answer charges, nor can they respond to what they believe are misstatements of fact and untruths.

Bottom line, they cannot correct false allegations or misstatements, they cannot give testimony before the court, and they cannot defend themselves in public or in private.

While I have concerns about striking immunity altogether or substituting the Government for the companies, I don't believe full immunity is the best option without having a court review the certification and the good-faith defense.

Currently, under FISA there is a procedure that allows the Government to receive assistance from telecommunications companies. As I have already described, title 18 of the U.S. Code, section 2511, states that the Government must provide a court order or a certification in writing that states:

> No warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required, setting forth the period of time during which the provision of the information, facilities, or technical assistance is authorized and specifying the information, facilities, or technical assistance required. . . .

That is it. Under the law, these are the circumstances under which a telecommunications company may provide information and services to the Government. Unfortunately, the administration chose not to go to the FISA Court in the fall of 2001 for a warrant. I will never understand why. Instead, it asserted that Article II of the Constitution allowed the President to act outside of FISA.

However, as I said, by January of 2007—more than 5 years later—the entire Terrorist Surveillance Program was, in fact, brought under the FISA Court's jurisdiction. So, ultimately, the administration agreed that the program can and should be conducted under the law.

Senators NELSON, CARDIN, SALAZAR, WHITEHOUSE, and I believe the question of whether telecommunications companies should receive immunity should hinge on whether the letters the Government sent to these companies met the requirements of 18 U.S.C. 2511 or, if not, if the companies had an objectionably reasonable belief their assistance was lawful, and what that objective belief was.

In other words, we should not grant immunity if companies were willingly and knowingly violating the law.

So the best way to answer this question is to allow an independent court, skilled in intelligence matters, to review the applicable law and determine whether the requirements of the law or the common law principle were, in fact, met. If they were, the companies would receive immunity; if not, they would not. But a court would make that decision, not a body, some of whom have seen the letters but most of whom have not. But it would be a court that is skilled in this particular kind of law.

I want to briefly comment on procedure. I very much regret that this amendment faces a 60-vote threshold when the other two amendments relating to telecom immunity face majority votes. Clearly, someone was afraid this might get a majority vote and, therefore, they put on a 60-vote requirement.

This, I believe, is prejudicial, and it places a higher burden on this amendment. And the irony is, this amendment could be an acceptable solution

for the other House, which has passed a bill that doesn't contain any provisions for immunity and has said they would not provide any provision for immunity. This is the way to handle that particular issue.

I, therefore, urge my colleagues to support this amendment both on the merits and so that we can finish the FISA legislation. I hope the conferees will take a strong vote on this amendment—whether it reaches 60 Senators to vote aye or not—as a signal that it is a good solution when the legislation goes to conference.

Mr. President, I ask for the yeas and nays on both of these amendments.

The ACTING PRESIDENT pro tempore. Is there objection to asking for the yeas and nays on the two amendments at this time?

Without objection, it is so ordered.

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

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

Mr. HATCH. Mr. President, for the last 6 months I have come to the floor on numerous occasions to offer my support of the limited immunity provisions in the Rockefeller-Bond bill.

In addition to my views on this subject, there are countless Americans who have expressed their support for the immunity provision.

In fact, I ask unanimous consent to have printed in the RECORD a letter sent to the Senate leadership last month, which is signed by 21 State attorneys general, which expresses their strong support for the immunity provision included in this bill.

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

DECEMBER 11, 2007.

RE FISA Amendments Act of 2007 (S. 2248).

Hon. HARRY REID,
Senate Majority Leader,
Washington, DC.
Hon. MITCH MCCONNELL,
Senate Minority Leader,
Washington, DC.

DEAR MAJORITY LEADER REID AND MINORITY LEADER MCCONNELL: We understand that the Senate will soon consider S. 2248, the FISA Amendments Act of 2007, as recently reported by the Senate Select Committee on Intelligence. Among other things, the bill would directly address the extensive litigation that communications carriers face based on allegations that they responded to requests from the government regarding certain intelligence-gathering programs. For a number of reasons, we support these carefully crafted provisions of the bill that the Intelligence Committee adopted on a bi-partisan basis.

First, protecting carriers from this unprecedented legal exposure is essential to domestic and national security. State, local and federal law enforcement and intelligence agencies rely heavily on timely and responsive assistance from communications providers and other private parties; indeed, this assistance is utterly essential to the agencies' functions. If carriers and other private parties run the risk of facing massive litigation every time they assist the government or law enforcement, they will lack incentives to cooperate, with potentially devastating consequences for public safety.

Second, the provisions of the bill are consistent with existing, long-standing law and policy. Congress has long provided legal immunity for carriers when, in reliance on government assurances of legality or otherwise in good faith, they cooperate with law enforcement and intelligence agencies. But because the government has invoked the ''state secrets privilege'' with respect to the subject matter of the cases, the carriers are disabled from mounting an effective defense, they are not permitted to invoke the very immunities written into the law for their benefit, and they cannot rebut the media storm that has damaged the companies' reputations and customer relationships. The immunity provisions of S. 2248 would overcome this paradox, but not simply by dismissing the pending cases outright. Instead, they would establish a thoughtful, multi-step process involving independent review by the Attorney General and the courts that, only when completed, would lead to dismissal of the claims.

Third, cases against the carriers are neither proper nor necessary avenues to assess the legality of the government's intelligence-gathering programs. Government entities or officials are already parties in over a dozen suits challenging the legality of the alleged programs, and the immunity provisions in S. 2248 would have no impact on these claims. In short, Congress should not, in a rush to hold the government accountable for alleged wrongdoing, burden these carriers with the substantial reputational damage and potentially ruinous liability that could flow from these suits. If these alleged programs were legally infirm, the government, not private actors who acted in good faith and for patriotic reasons, should answer for them.

For these reasons, we urge that any FISA-reform legislation adopted by the Senate include the carrier-immunity provisions currently contained in S. 2248.

Hon. W.A. Drew Edmondson, Attorney General of Oklahoma; Hon. J.B. Van Hollen, Attorney General of Wisconsin; Hon. John Suthers, Attorney General of Colorado; Hon. Patrick Lynch, Attorney General of Rhode Island; Hon. Bill McCollum, Attorney General of Florida; Troy King, Attorney General of Alabama; Hon. Dustin McDaniel, Attorney General of Arkansas; Hon. Thurbert E. Baker, Attorney General of Georgia; Hon. Paul Morrison, Attorney General of Kansas; Hon. Kelly Ayotte, Attorney General of New Hampshire.

Hon. Jon Bruning, Attorney General of Nebraska; Hon. Wayne Stenehjem, Attorney General of North Dakota; Hon. Roy Cooper, Attorney General of North Carolina; Hon. Henry McMaster, Attorney General of South Carolina; Hon. Tom Corbett, Attorney General of Pennsylvania; Hon. Greg Abbott, Attorney General of Texas; Hon. Larry Long, Attorney General of South Dakota; Hon. Bob McDonnell, Attorney General of Virginia; Hon. Mark Shurtleff, Attorney General of Utah; Hon. Darrell McGraw, Attorney General of West Virginia; Hon. Bob McKenna, Attorney General of Washington.

Mr. HATCH. Mr. President, here is the list of the attorneys general who signed this letter endorsing the immunity provision in the original Rockefeller-Bond bill. They are attorneys general from the States of Wisconsin, Rhode Island, Oklahoma, Colorado, Florida, Alabama, Arkansas, Georgia, Kansas, Utah, Texas, New Hampshire, Virginia, North Dakota, North Carolina, South Carolina, Pennsylvania, South Dakota, Nebraska, West Virginia, and Washington.

In addition, I ask unanimous consent to have printed in the RECORD four letters sent from law enforcement organizations, all in support of the immunity provision of the bill.

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

NATIONAL SHERIFF'S ASSOCIATION,
Alexandria, VA, November 13, 2007.

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

DEAR CHAIRMAN LEAHY AND RANKING MEMBER SPECTER: On behalf of the National Sheriffs' Association (NSA), I am writing to urge you to support Section 202 of the FISA Amendments Act of 2007 (S. 2448). This extension of retroactive immunity under the terms referenced in this section would have a significant impact on the cooperative relationship between the government and the private companies to safeguard public safety.

As you know, the electronic surveillance for law enforcement and intelligence functions depends in great part on the cooperation of the private companies that operate the nation's telecommunication system. Section 202 would provide much needed liability relief to electronic communication service providers that assisted the intelligence community to implement the President's surveillance program in the aftermath of September 11, 2001. The provision of retroactive immunity would help ensure that these providers who acted in good faith to cooperate with the government when provided with lawful requests in the future.

The nation's sheriffs recognize the critical role that electronic communication service providers play in assisting intelligence officials in national security activities. However, given the scope of the current civil damages suits, we are gravely concerned that, without retroactive immunity, the private sector might be unwilling to cooperate with lawful government requests in the future. The possible reduction in intelligence that might result from protracted litigation is unacceptable for the security of our citizens.

As the Senate considers the FISA Amendments Act of 2007, we strongly urge you to help preserve the cooperative relationship between law enforcement and the private sector by supporting Section 202.

Sincerely,

SHERIFF CRAIG WEBRE,
President.

THE NATIONAL TROOPERS COALITION,
Washington, DC, November 12, 2007.

Hon. PATRICK J. LEAHY,
Chairman, Senate Judiciary Committee, Washington, DC.
Hon. ARLEN SPECTER,
Ranking Member, Senate Judiciary Committee, Washington, DC.

DEAR CHAIRMAN LEAHY AND RANKING MEMBER SPECTER: As the Senate Judiciary Committee gets set to consider legislation that would update the Foreign Intelligence Surveillance Act (FISA), the National Troopers Coalition wishes to express its support for Section 202 of the FISA Amendments Act of 2007. This section is of particular importance to the NTC and law enforcement in general

because it will have a significant impact on the cooperative relationship between government and the private sector in relation to public safety.

Section 202 provides much needed relief from mass tort litigation relief to telecommunications companies that helped protect our nation after the horrific attacks of September 11, 2001. Should this narrow provision not be adopted, we believe that all levels of law enforcement will suffer by losing the cooperation of vital allies in our ongoing fight againt crime. The chilling effect will be that businesses may feel compelled to avoid the risk of litigation by declining to cooperate with law enforcement even though they have every reason to believe the request is lawful.

In the weeks following the 9/11 attacks, some telecommunications companies were apparently asked by the President for their assistance with intelligence activities, aimed at preventing similar attacks in the future. These companies were assured that their compliance was necessary and deemed lawful by the Attorney General. Upon complying with the government's request, and providing information that would keep the American people safe, these companies now face the prospect of years of litigation, even though they cannot defend themselves in court due to the highly classified nature of the governmental program they were assured was legal. This is disheartening, to say the least.

The nation's State Troopers understand the vital role that private businesses play in emergency situations and criminal investigations, and we are concerned that if these companies continue to be dragged through costly litigation for having responded in these circumstances, it will deter their voluntary cooperation with law enforcement authorities in the future. When it comes to protecting the public from terrorists, sophisticated international gangs and on-line predators, government counts on its private sector partners for help. We cannot afford to send the message that if you cooperate with law enforcement you will be sued.

As the Senate considers this legislation, we strongly urge you to help preserve the cooperative relationship between law enforcement and private businesses by supporting Section 202.

Sincerely,

DENNIS J. HALLION,
Chairman.

NATIONAL NARCOTIC OFFICERS' ASSOCIATION'S COALITION,
West Covina, CA, November 14, 2007.

Re Support for Section 202 of the FISA Amendments Act of 2007

Hon. PATRICK LEAHY,
Chairman, Senate Committee on the Judiciary, Washington, DC.
Hon. ARLEN SPECTER,
Ranking Member, Senate Committee on the Judiciary, Washington, DC.

DEAR CHAIRMAN LEAHY AND RANKING MEMBER SPECTOR: I am writing on behalf of the forty-four state narcotic officers' associations and the more than 69,000 law enforcement officers represented by the National Narcotic Officers' Associations' Coalition (NNOAC) to encourage your strong support for Section 202 of the FISA Amendments Act of 2007.

Section 202 provides much-needed relief from mass tort litigation towards telecommunications companies that helped protect our nation after the horrific attacks of September 11, 2001. Should this provision not be adopted, we believe that federal, state and local law enforcement will suffer by losing important voluntary cooperation of allies in our national fight against crime. Private corporations and business may decide to avoid the risk of litigation by declining to cooperate with law enforcement—even if they have every reason to believe the request for their help is lawful and just.

The NNOAC understands and appreciates the vital role that private businesses play in emergency situations and criminal investigations. Our membership is very concerned that if these corporate entities continue to be dragged through costly litigation for having responded during dire circumstances—like the terrorist attacks occurring on September 11, 2001—it will have a chilling effect on the private sector's voluntary cooperation with law enforcement in the future. The United States government cannot afford to send the message to corporate America that if you cooperate with law enforcement and the office of the United States Attorney General, you will get sued.

Thank you for your consideration of this important provision and your continued support towards law enforcement. I am happy to discuss this issue further.

Sincerely,

RONALD E. BROOKS,
President.

INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE,
Alexandria, VA, November 15, 2007.

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

DEAR CHAIRMAN LEAHY: As President of the International Association of Chiefs of Police (IACP), I am writing to express my support for Section 202 of the FISA Amendments Act of 2007. This section is of particular importance to law enforcement because it will have a significant impact on the vital cooperative relationship between government and the private sector that is necessary to promote and protect public safety.

As you know, Section 202 provides relief from litigation to telecommunications companies that responded to the government's request for assistance following the horrific attacks of September 11, 2001. It is my belief that failure to adopt this provision could jeopardize the cooperation of vital allies in our ongoing fight against crime and terrorism. Businesses often feel compelled to avoid the risk of litigation by declining to cooperate with law enforcement even though they have every reason to believe the request is lawful.

Police chiefs understand the vital role that private businesses often play in emergency situations and criminal investigations, and we are concerned that if these companies are faced with the threat of litigation for responding in these circumstances, it will have a chilling effect on their voluntary cooperation with law enforcement authorities in the future.

At this critical time in history, when federal, state, tribal and local law enforcement agencies are striving to protect the public from terrorists, sophisticated international gangs, online predators, and other violent criminals, it is extremely important that we be able to rely on the private sector for much needed assistance.

Therefore, as the Senate considers this legislation, I urge you to help preserve the cooperative relationship between law enforcement and private businesses by supporting Section 202.

Thank you for your attention to this important matter and for your efforts on behalf of law enforcement.

Sincerely,

RONALD C. RUECKER,
President.

Mr. HATCH. Mr. President, The first letter is from the National Sheriffs Association on behalf of 20,000 nationwide sheriffs. It states in part:

The Nation's sheriffs recognize the critical role that electronic communication service providers play in assisting intelligence officials on national security activities. We are gravely concerned that, without retroactive immunity, the private sector might be unwilling to cooperate with lawful Government requests in the future. The possible reduction in intelligence that might result from protracted litigation is unacceptable to the security of our citizens. We strongly urge you to help preserve the cooperative relationship between law enforcement and the private sector by supporting the immunity provision of this bill.

The other letters include one from the National Troopers Coalition, on behalf of its 40,000 members, one from the International Association of Chiefs of Police, on behalf of its 21,000 members, and one from the National Narcotics Officers' Association's Coalition on behalf of its 69,000 members. All of these letters support the retroactive immunity provision.

I have to tell you, when 150,000 law enforcement personnel with tremendous experience and expertise say they support telecom retroactive immunity, we should be listening and we should be giving this great weight. They know firsthand the dangers we face and they know what is at stake.

Let me talk a little about the Feinstein amendment No. 3910 on exclusive means. S. 2248 already has an exclusive means provision that is identical to the first part of the distinguished Senator's amendment. That provision simply restates Congress's intent back in 1978, when FISA was enacted, to place the President at his lowest ebb of authority in conducting warrantless foreign intelligence surveillance.

The current provision in S. 2248 was acceptable to all sides in the Intelligence Committee because it maintains the status quo with respect to the dispute over the President's constitutional authority to authorize warrantless surveillance.

Unfortunately, the amendment of the distinguished Senator from California is a significant expansion of the bipartisan provision that we enacted in the Intelligence Committee bill. Her amendment goes further by stating that only an express statutory authorization for electronic surveillance, other than FISA or the criminal wiretap statutes, shall constitute additional exclusive means.

This attempts to prohibit the President's exercise of his judicially recognized article II authority to issue warrantless electronic surveillance directives.

During the next attack on our country or in the face of an imminent threat, the Congress may not be in a position to legislate an express authorization of additional means. We may get intelligence information about an imminent threat during a lengthy recess, over a holiday. Air travel may be inhibited.

The bottom line is, we don't know what tomorrow will bring. Yet this

provision of the distinguished Senator from California would raise unnecessary legal concerns that might impede effective action by the executive branch to protect this country.

This amendment would also make members of the intelligence community who conduct electronic surveillance at the direction of the President subject to the FISA criminal penalty provisions of a $10,000 fine and imprisonment for not more than 5 years.

Virtually all of these people are not partisan people. They are people who continue on regardless of what administration is involved. They are there to do the job to protect us. They are not partisans. We should not treat them as such, and certainly we should not be saying that if they make a mistake, they are subject to a criminal provision of a $10,000 fine or imprisonment of not more than 5 years. Also, it is likely these criminal penalties would apply to any service provider who assisted the Government in conducting such electronic surveillance. That makes it even tougher to get their cooperation. Up until now they have been willing to cooperate because they realize how important this work is, and they have the request of high-level officials in the Government. That should be enough to protect them. They are doing it patriotically, to protect our country. They should not be hampered nor should their general counsels have to make a decision that the U.S. Government will have to go to court, with all of the delays involved in that, in order to do what it takes to protect the people in this country.

Regardless of what the skeptics and critics have said about the President's Terrorist Surveillance Program, the Constitution trumps the FISA statute. If a Government employee acts under the color of the President's lawful exercise of his constitutional authority, that employee should not be subject to a criminal penalty.

In my opinion, the current restatement of exclusive means is fair and keeps the playing field level, and it is enough. Ultimately, the Supreme Court may decide whether Congress has the authority to limit the President's authority to intercept enemy communications. Until then, it is my hope that we don't try to tilt the balance in a way that we may someday come to regret.

I urge my colleagues to vote against this exclusive means amendment.

The next Feinstein amendment is No. 3919. This amendment alters the immunity provision of the Rockefeller-Bond bill. I will oppose this amendment.

As has been said countless times, the immunity provision in this legislation was created after months of extensive debate and negotiation between the Congress and the intelligence community.

I cannot emphasize enough the painstaking work that the Intelligence Committee undertook in order to create this immunity provision. The chairman of the Senate Select Committee on Intelligence stated the following in the Intelligence Committee report:

> The [Intelligence] Committee did not endorse the immunity provision lightly. It was the informed judgment of the Committee after months in which we carefully reviewed the facts in the matter. The Committee reached the conclusion that the immunity remedy was appropriate in this case after holding numerous hearings and briefings on the subject and conducting a thorough examination of the letters sent by the U.S. Government to the telecommunications companies.

The administration wanted more than what is in this bill, and they did not get it. In a bipartisan way, we came together to come up with this bill, and it should not be tampered with now on the floor.

Let's look at what this means in relation to ongoing litigation. Since this immunity compromise provides no immunity for Government agencies or officials, the following seven cases will continue to be unaffected by this legislation. The immunity provision of the Senate Select Committee on Intelligence bill still allows TSP challenges in the al-Haramain Islamic Foundation, Inc. v. George W. Bush case, the ACLU v. National Security Agency case, the Center for Constitutional Rights v. George W. Bush case, the Guzzi v. George W. Bush case, the Henderson v. Keith Alexander case, the Shubert v. George W. Bush case, and the Tooley v. George W. Bush case.

I wish to draw attention to the first case. The al-Haramain Islamic Foundation has been designated by the Department of the Treasury as a ''specially designated global terrorist'' for providing support to al-Qaida and was similarly designated by the United Nations Security Council. If there ever was a case that should be dismissed, this is it—a terrorist organization providing support to al-Qaida sues the President for listening to their terrorist conversations. Unbelievable. And yet since the immunity provision in this bill is silent on the issue, the case will go on.

I highlight this case to remind people the provision in the bill already represents a compromise. The provision in the original bill passed by a 13-to-2 bipartisan vote out of the Intelligence Committee on which I serve. Despite repeated attempts to tweak this compromise, it remains the most appropriate and just mechanism for the resolution of this issue.

Just like the faulty ideas of Government indemnification and Government substitution, the Foreign Intelligence Surveillance Court review of certifications is yet another alternative that fails to improve on the original bipartisan immunity compromise we have in the bill before us.

I will oppose any provisions which weaken the immunity compromise. This amendment we are debating will do exactly that. Rather than rely on the carefully crafted language, this amendment introduces radically new ideas which completely change the dynamics of the immunity provision of the bipartisan bill. Rather than allowing the presiding district judge to review the Attorney's General certification called for in this bill, this amendment unnecessarily expands the Foreign Intelligence Surveillance Court jurisdiction into areas unheard of when this court was created nearly 30 years ago and equally unheard of in the year 2008.

Let's remember what it is that the Foreign Intelligence Surveillance Court was created to do:

> A court which shall have jurisdiction to hear applications for and grant orders approving electronic surveillance.

That is the mission of the FISC. So the FISC hears applications for and grants orders approving electronic surveillance. That is it. That is all they were created to do and rightly so. These are judges from all over the country who serve on the FISC at special times and do read these briefs, do read these legal matters that come before them, and then do exactly that, ''a court which shall have jurisdiction to hear applications for and grant orders approving electronic surveillance.''

Yet this legislation will completely alter the nature of this court by transforming it into a trial court for adversarial litigation. This completely alters the intention of FISA from 1978 which carefully created this court. The role of the FISC, or Federal Intelligence Surveillance Court, has been greatly misunderstood during this debate.

I suggest we pay close attention to the recent opinion from the FISC, which is only the third public opinion in the history of the FISC, and that is over a 30-year period. The importance of this quote has been emphasized many times by Senator BOND, and this is what the FISC said:

> Although the FISC handles a great deal of classified material, FISC judges do not make classification decisions and are not intended to become national security experts. Furthermore, even if a typical FISC judge had more expertise in national security matters than a typical district court judge, that expertise would not be equal to that of the executive branch which is constitutionally entrusted with protecting the national security.

I understand there are certain Senators in this body who dislike President Bush. That is their right. But on the other hand, there may come a time when a President of their party may have to protect our country. They ought to think it through because they are taking away the tools that are necessary to protect our country in a zeal to go beyond what the FISC was ever designated to do.

Going beyond the fact this amendment would turn the role of the FISA Court on its head, let's look at what the FISC is asked to do in this amendment. According to the language, liability protection would only occur in three limited instances: One, the statutory defense in 18 U.S.C. 2511(2)(a)(ii)

has been met. Two, the assistance of electronic surveillance service providers was undertaken on good faith and pursuant to an ''objectively reasonable belief'' that compliance with the Government's directive was lawful. And three, assistance was not provided.

Regarding the first instance in which litigation would be dismissed, we need to realize 18 U.S.C. 2511 is not the only statute that allows the Government to receive information from telecommunications companies. There are numerous statutes which authorize the Government to receive information from private businesses. Here is a list not meant to include all such statutes. Look at this list:

18 U.S.C. 2516; 18 U.S.C. 2518, 18 U.S.C. 2512(2)(a)(ii), 18 U.S.C. 2511(3)(b)(iv), 50 U.S.C. 1802(a), 50 U.S.C. 1804, 50 U.S.C. 1805, 50 U.S.C. 1811, 50 U.S.C. 1861, 18 U.S.C. 2702(b)(5), 18 U.S.C. 2702(c)(5), 18 U.S.C. 2702(b)(8), 18 U.S.C. 2702(c)(4), 18 U.S.C. 2703(a), 18 U.S.C. 2709, 50 U.S.C. 1842, 18 U.S.C. 3127, 50 U.S.C. 1843, and 50 U.S.C. 1844, to mention a few.

Regarding the second narrow instance of dismissal of litigation, the phrase ''objectively reasonable belief'' is not defined in the legislation. What does this mean? How can it not be given a definition if the court is supposed to rely on it? Are we going to turn it over to the court to define it? Again, that is not the mission of the court. The court is not skilled in intelligence matters, except to the extent they have to know about it to be able to approve the various requests that are made of them, and there is no way it is going to be as skilled as the intelligence community.

So this amendment would grant the FISC new jurisdiction to review past conduct of private businesses utilizing a standard which did not exist at the time of the supposed activity and a standard which is not even defined in the legislation which creates it. Wow.

In addition, this amendment would allow plaintiffs and defendants to appear before the Federal Intelligence Surveillance Court. But we should know the FISC is not a trial court. It has never had plaintiffs in ongoing civil litigation appear before it in its nearly 30 years of existence.

There are approximately 40 civil cases which are ongoing out of this matter. Would all these plaintiffs appear before FISC? How would classified information, therefore, be protected? This amendment would create an entirely new role for the FISC, thus abandoning the very formula by which the FISC was created in the first place. Remember, the FISC was created to be a specialized court. Yet the expansion of FISC jurisdiction and duty required by this amendment brings us down a road where the FISC could be transformed from a specialized court to an appendage of the Federal district court. That precedent set by this amendment could forever alter the role of the FISC.

Quite simply, the FISC is not a trial court, nor should it be. Quite simply, the FISC is not a forum for adversarial litigation, nor should it be.

This amendment extends the rationale that the answer to any question during this debate is ''have the FISC look at it.'' The role of the FISC is vitally important, but the FISC is not the answer to every question during this debate. Misguided attempts to expand the FISC to be the purported solution to any alleged problem with terrorist tracking are impractical, imperceptive, and inappropriate.

We are long past the time for guesswork, and we need to support the tried-and-true bipartisan immunity provision as appropriate remedy to a critical problem. I reiterate my strenuous objection to this amendment, and I urge my colleagues not to support an amendment which introduces far too many unanswered questions into a debate which needs none.

AMENDMENT NO. 3912

With regard to amendment No. 3912 regarding bulk collection, this amendment did pass out of the Judiciary Committee, but it passed on a 10-to-9 party-line vote after only four minutes of discussion. This Judiciary substitute was tabled by the full Senate by a 60-to-36 vote, and this amendment is one of the reasons it was.

There is confusion about the need for this amendment. Does it preclude bulk collection or not? The text of the amendment seems to indicate that no bulk collection is permitted. Yet the author of the amendment states there is an exception for military operations. I have read the amendment, and I don't see any exception listed. Perhaps he is referencing comments in the Judiciary Committee report. But committee reports are not law.

The Attorney General and Director of National Intelligence have carefully reviewed this amendment, and they have stated that if this amendment is in a bill which is presented to the President, they will recommend that the President veto the bill, and I agree with that recommendation.

AMENDMENT NO. 3979

With regard to the Feingold amendment No. 3979 on sequestration of U.S. person communications, I am very concerned about the substance of this amendment, as are many of my colleagues. In addition, the Attorney General and Director of National Intelligence have thoroughly reviewed this amendment, and they recently sent a letter to the Senate stating:

> This amendment would eviscerate critical core authorities of the Protect America Act and S. 2248. Our prior letter and Statement of Administration Policy explained how this type of amendment increases the danger to the Nation and returns the intelligence community to a pre-September 11th posture that was heavily criticized in congressional reviews. It would have a devastating impact on foreign intelligence surveillance operations. It has never been the case that the mere fact that a person overseas happens to communicate with an American triggers a need for court approval. Indeed, if court approval were mandated in such circumstances, there would be grave consequences for the intelligence communities' efforts to collect foreign intelligence.

The last part of this has been underlined.

> Accordingly, if this amendment is part of a bill that is presented to the President, we, as well as the President's other senior advisors, will recommend that he veto the bill.

Unlike many of the amendments we have debated here on the Senate floor, this amendment did not receive a vote in either the Intelligence or Judiciary Committees. Not that that is limiting, but the amendment itself is not a healthy one on its face. Yet this amendment is among the most drastic in terms of affecting the efficiency and effectiveness of our intelligence collection processes. This amendment imposes tremendous restrictions in which the intelligence community is limited in what information they can receive and how this information can be shared.

That is what I think we were shocked to find when 9/11 occurred, that our various intelligence community organizations—FBI, CIA, et cetera—were not sharing information. Now that we have solved that problem, why go back?

The massive reorganization of our collection techniques which would be required by this amendment is certainly obvious. The author of the amendment has recognized this as well, previously stating:

> I do understand this amendment imposes a new framework that may take some time to implement.

We need to remember the purpose of this bill is, and always has been, to enable the intelligence community to target foreign terrorists and spies overseas. But in order to make sure we are not missing valuable intelligence, we need to get all of a target's communications, not only when that target is talking with other people overseas, and that may mean intercepting calls with people inside the United States. In fact, those may be the most important calls to try to prevent an attack in the United States.

I understand there is concern about the impact of foreign targeting on U.S. persons. But we have a lot of protections built into this new bill that came out of the Intelligence Committee on a 13-to-2 bipartisan vote. I have been to this floor on numerous occasions and highlighted how the Foreign Intelligence Surveillance Court's role in all aspects of foreign intelligence collection is being greatly expanded by this bill, far beyond the 1978 FISA statute.

In addition, the Senate agreed to an amendment by Senator KENNEDY that would make it clear you cannot use authorities in this bill to require communications where the sender and all intended recipients are known to be in the United States. We shouldn't go any farther.

The intelligence community must use minimization procedures. Our analysts are familiar with these procedures. They have used them for a long

time without any known abuses. Yet the scope of this amendment seems to represent no confidence in the minimization procedures used by the U.S. Government. Keep in mind, these minimization procedures were enacted over 30 years ago, and this bill will authorize the FISC to review and approve them for the first time.

This bill goes farther than ever before in our history in striking a balance between intelligence collection and protection of civil liberties. Personally, I am proud of this bill. I think all in the Intelligence Committee should have stuck with it, and we should not be trying to amend it at this point, especially with amendments that aren't going to work and will diminish our ability to get the intelligence we need to protect our citizens. Now I believe that in this bill we are protecting the civil liberties of ordinary Americans, but we also need to make sure our intelligence community isn't blind to information which may ultimately prove to be critical.

Section (a)(1) of this amendment would not allow the collection of certain communications if the Government knows before acquisition a communication is to or from a person reasonably believed to be in the United States. The Government knows when it targets foreign citizens in foreign countries that they might call or be called by U.S. persons. These are called ''incidental communications.'' Under the limitations in this amendment, the Government could not initiate the collection in the first place under many circumstances. This essentially undoes the authority granted in section 703 of this bill and will cause us to go deaf to our enemies.

The Director of National Intelligence has told us before that speed and agility are essential in tracking terrorists and preventing terrorist attacks. Yet even if collection could somehow begin under the dangerous restrictions in this amendment, analysts would have to go through hoop after hoop after hoop to use information that has foreign intelligence value. Remember, if it doesn't have foreign intelligence value, any U.S. person information would already have been minimized.

I do not understand why we would set up unnecessary roadblocks and slow this process down when we already have so many substantial protections in place. The Director of National Intelligence has stated this amendment would cause significant operational problems for the intelligence community that could lead to intelligence gaps. I affirm this statement. Knowing this, it would be irresponsible to handcuff our intelligence community with these additional restrictions.

I urge my colleagues to join me in opposing this dangerous amendment.

I emphasize again: We have brilliant, knowledgeable, well-trained, decent, honorable people who are here, no matter who is President, in the business of protecting our citizens from terrorist acts. And this bill, which passed 13 to 2 on a bipartisan vote out of the Intelligence Committee, provides more checks on these good people than the FISA Act of 1978 did, and that act has worked very well through all those years. The reason we are doing this bill is because we are in a new age, with new methods of communication that simply were not covered by the 1978 act, to put it in simple terms.

This is a complex thing, and I think we have to be very careful if we go beyond what the Intelligence Committee bill has said we should do. It was a bill worked out after months of hearings and work by the Intelligence Committee. I believe, in the Senate, I have probably been on the Intelligence Committee longer than anybody else, and I want to protect our people too. I want to protect them in a multiplicity of ways. But one of the most important ways we can protect them in this day of Islamic fascism is to give them the tools to do it and not restrict and hamper them from doing it—keeping in mind that they are honest, non-partisan citizens who are more interested in protecting Americans and getting the information we need to protect everybody than the partisans and sometimes uninformed people make them out to be.

Yes, any administration can put the top-level people in, but it is those who collect this information on a daily basis, minimize this information when it needs to be minimized, and work to do it in an honorable fashion who do the work. We should not be tying their hands and hampering them from getting the work done in this day and age when we have so many problems, and it looks to me as if we are going to have them for many years to come.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Rhode Island.

AMENDMENT NO. 3919

Mr. WHITEHOUSE. Mr. President, I am glad to have had the occasion to be on the floor and hear the words of the very distinguished Senator from Utah, who has served with such distinction on the Intelligence Committee for so long, but I would respond to him first that this much-touted 13-to-2 vote in the Intelligence Committee, as shown by the record of the additional views of the members of the Intelligence Committee, reflected the consensus of the Intelligence Committee that this was a work in progress; that it should go on to the Judiciary Committee, which was its next stop, and then to the floor. There was no sense that the work on the bill should stop at the time it left the Intelligence Committee.

Indeed, in the 13-to-2 vote, there were 9 Senators who offered additional views suggesting changes or differences in the legislation. So I don't think it would be wise or appropriate for this body to take a look at what the Intelligence Committee did and say that because the number appears to be 13 to 2 on the surface that we are not going to do our job of continuing to work on this work in progress.

In that spirit, I rise today to support amendment No. 3919, on good faith determinations, offered by Senators FEINSTEIN and NELSON. In the divisive debate we are having over immunity, Senator FEINSTEIN's amendment is a commendable effort to find middle ground, to which Senator FEINSTEIN has brought great diligence and care. Senator SPECTER and I have offered a broader approach, but I also support the Feinstein-Nelson amendment.

This amendment goes forward with the first half of Specter-Whitehouse. It provides for an independent judicial review of the companies' good faith. Specter-Whitehouse then provides for substitution of the Government in place of the companies, which would protect plaintiffs' legitimate rights to continue legitimate litigation, including the right to conduct discovery.

Substitution also avoids the problem of uncompensated congressional termination of ongoing litigation—a separation of powers problem. Senator FEINSTEIN's alternative at least provides for the bare minimum of a judicial determination whether the defendant companies were acting in compliance with the law or with the reasonable good faith belief that they were in compliance. I would note this is probably the lowest possible standard. We don't even require companies to have been acting within the law. All we require in this amendment is that they have a reasonable and good faith belief they were acting within the law.

As I have said before, both of the all-or-nothing approaches we are presented with here are flawed. Full immunity would strip the plaintiffs of their day in court and take away their due process rights without any judicial determination that the companies acted in good faith. That is not fair. Nothing suggests this isn't legitimate litigation, and it is wrong to take away a plaintiff's day in court without a chance to show why doing so may not be warranted.

I hope in this Chamber we can all agree that if the companies did not act reasonably and in good faith they shouldn't get protection. If we agree on that, the question becomes where the good faith determination should be made. I think it should be in court, and that is where Senator FEINSTEIN's amendment puts it—in this case, the FISA Court. First, it should not be here. We in Congress are not judges, and good faith is a judicial determination. We should leave this key determination to the judicial branch of Government. The companies have, of course, asserted that they acted in good faith. But we surely should not rely on one side's assertions in making a decision of this importance.

Moreover, most Senators have not even been read into the classified materials that would allow them to reach a fair conclusion. This body is literally incapable of forming a fair opinion

without access by most Members to the facts. So this is the wrong place to have it. We need to provide a fair mechanism for a finding of good faith by a proper judicial body with the proper provisions for secrecy, which the FISA Court has. If we do not do this, we are simply acting by brute political force, and doing so in an area where there are significant constitutional issues. Congress cutting off the ongoing work of the judicial branch may well violate the boundary that keeps the legislative and judicial branches separate—a cornerstone of our Constitution.

In an opinion written by Justice Scalia, the U.S. Supreme Court said that the Framers of the Federal Constitution had what they called ''the sense of a sharp necessity to separate the legislative from the judicial power, prompted by the crescendo''—was the word they used—''of legislative interference with private judgments of the courts.''

If there were ever a case of legislative interference with private judgment of the courts, this is it. On the other hand, consider the fact that the Government has forbidden these defendants to defend themselves. By invoking the state secrets privilege, the Government has gagged the companies. In my view, that is not fair either, particularly if the Government put these companies in this mess in the first place. So both of the all-or-nothing approaches are flawed.

I think Senator SPECTER and I have come up with the best answer: substitution. But Senator FEINSTEIN's amendment at least requires the FISA Court to make an initial determination that the companies either did not provide assistance to the Government—obviously, if they did not do anything, they should not be liable—or were actually complying with the law. Clearly, if they complied with the law, they should not be liable—or were at least acting with a reasonable good-faith belief that they were complying with the law—again, the lowest possible standard. If we cannot agree on this, then we have really taken our eyes off of our duties. The difference then becomes that once that good-faith determination is made, the Specter-Whitehouse amendment would lead to substitution, whereas the Feinstein-Nelson amendment would lead to a termination of the claims.

Both of these approaches are better than the all-or-nothing alternative we otherwise face, and both share the same goal: to use existing procedures and existing rules and existing courts to unsnarl this litigation and move it toward a just and a proper conclusion.

I urge my colleagues to support both the Specter-Whitehouse and the Feinstein-Nelson amendments.

I make one final point. Senator HATCH pointed out that the people who serve us in our intelligence community are honorable, are well trained, are intelligent, are decent, and are trying to do the right thing. I do not challenge any of that.

As the U.S. attorney, I worked with FBI agents day-in and day-out, Secret Service agents, Drug Enforcement Administration agents, Alcohol, Tobacco and Firearms agents—all decent, honorable, hard working, well trained, trying to do the right thing. In that environment, they are all very comfortable that the structure we have put in place for domestic surveillance, to protect American's rights, is a useful thing, it is important infrastructure of Government.

I see what we are trying to do now not as a criticism of the people in the intelligence community but, rather, as being an attempt to build out the infrastructure, the infrastructure that balances freedom and security in this new area of international surveillance, in just the same way we put restrictions on our agents at home.

As attorney general, I actually had to personally get the wiretaps for the State of Rhode Island from the presiding judge of the superior court. I would say the same thing about the Rhode Island State troopers with whom I worked in those cases.

Agents and police officers who have this responsibility do not resent the fact that they are given a structure to work within. I doubt that the intelligence community would resent a sensible measure that would allow a judicial determination before an American company has a finding of good faith made about it.

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

The PRESIDING OFFICER (Ms. KLOBUCHAR). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 3979

Mr. FEINGOLD. Madam President, today I want to address several of the pending amendments to the FISA legislation, and I will indicate the amendment number of each one as I discuss it. First is what we call the Feingold-Webb-Tester amendment No. 3979. I wish to address some of the arguments that have been made in opposition to Feingold-Webb-Tester and to set the record straight about what the amendment does. The Senator from Missouri has suggested it would cut off all foreign intelligence collection because the Government would not be able to determine in advance whether communications are foreign to foreign. This is preposterous. The whole point of the amendment is to allow the Government to acquire all communications of foreign targets when it does not know in advance whether they are purely foreign or have one end in the United States.

The administration also argues we should not pass the Feingold-Webb-Tester amendment because it would be difficult and time consuming to implement. That is no reason to oppose the amendment. I understand the amendment imposes a new framework, and that is precisely why the amendment grants the Government up to a year before it goes into effect.

I also wish to make clear that the amendment does not force the Government to determine the location of every person and every e-mail the Government acquires, contrary to what has been suggested. The amendment only requires that the Government determine whether one end of a communication is in the United States where reasonably practicable, based on procedures approved by the FISA Court. In some instances, that would be easy to do, while in others it would not be feasible at all. The court-approved procedures will take those differences into account.

It is also not true that the amendment would harm our nonterrorism foreign intelligence operations. This amendment leaves intact the warrantless acquisition of any foreign-to-foreign communications and any communications where the Government doesn't know in advance whether they are to or from people in the United States. Even for communications where the Government knows they involve Americans in the United States, no court order is actually required for communications relating to terrorism or anyone's safety.

This is much broader than the pre-Protect America Act law. None of this would have been possible 7 months ago. Let's not forget the justification for this legislation has always been about terrorism and foreign-to-foreign communications. Last month, the Vice President defended the Protect America Act by talking about ''one foreign citizen abroad making a telephone call to another foreign citizen abroad about terrorism.'' The Feingold-Webb-Tester amendment allows those calls to be monitored without a warrant.

The Feingold-Webb-Tester amendment allows the Government to get the information it needs about terrorists and about purely foreign communications, while providing additional checks and balances for communications between people in the United States and their overseas family members, friends, and business colleagues. I urge my colleagues to support the Feingold-Webb-Tester amendment.

Let me next turn to Amendment No. 3912, which has been referred to as the bulk collection amendment. I wish to again stress the importance of my amendment prohibiting the bulk collection of Americans' international communications. The bill we are debating is supposedly intended to permit monitoring of foreign-to-foreign communications and the tracking of terrorists overseas without a warrant. It is not supposed to allow the Government to collect all communications into or out of the United States, but

that is exactly what the Government could seek to do with these authorities, which is why this amendment is critical. I have yet to hear any real arguments against it.

The DNI's recent letter opposing the amendment fails to come up with any substantive arguments. Instead, it describes hypothetical situations that clearly wouldn't be affected by the amendment. In order to protect the international communications of innocent Americans at home, the amendment simply requires that the Government is seeking foreign intelligence information from its targets. In the only examples cited in the letter—a neighborhood or group of buildings or geographic area that the U.S. military is about to invade—clearly, the Government has that purpose. The notion that the Government could not make a good-faith certification to the court that it is seeking foreign intelligence, which is all this amendment requires, is simply ludicrous. What is telling about the DNI's letter, besides that it includes no real arguments against the amendment, is what it does not say. It does not refute the danger this amendment is intended to address: the bulk collection of all communications between the United States and Europe or Canada or South America or, indeed, the world.

The DNI has testified that the PAA would authorize that kind of massive, indiscriminate collection of Americans' communications, and the administration has never denied that this bill could, too, unless we pass this amendment. In fact, this letter does nothing to reassure the American people the Government could not and would not collect all their international communications. Worse, the letter argues that a prohibition on that kind of massive collection would not ''appreciably enhanc[e] the privacy interests of Americans.'' If the DNI does not think the privacy interests of Americans would be affected by the collection of all their international communications, potentially vacuuming up their communications not just with foreigners overseas but with Americans overseas as well, then that is all the more reason to be concerned.

Serious constitutional issues are at stake. The administration is effectively telling us it intends to ignore them.

Let me also respond to a statement by the chairman of the Intelligence Committee last week that a dragnet of all international communications of Americans would probably violate the fourth amendment. I am pleased to hear the chairman acknowledge that the surveillance the administration would like to conduct would violate the constitutional rights of Americans, but how could we possibly expect this administration—an administration that has already demonstrated indifference to Americans' privacy and has already said that bulk collection would be ''desirable''—to hold back. Nor should we rely on the FISA Court to stop this, as the chairman has suggested. If Congress believes something is unconstitutional, we have absolutely no business authorizing it. We have been warned, and now we need to act by passing my modest bulk collection amendment.

I reserve the remainder of my time on amendment No. 3902.

As to the Dodd-Feingold immunity amendment No. 3907, I am pleased to join my colleague in offering this amendment to strike the immunity provision. I ask unanimous consent that I be yielded 15 minutes to speak on the Dodd amendment and that the time be charged to the proponents of the amendment.

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

Mr. FEINGOLD. I thank the Senator from Connecticut.

AMENDMENT NO. 3907

I strongly support Senator DODD's amendment to strike the immunity provision from this bill. I thank him for his leadership on the issue. I offered a similar amendment in the Judiciary Committee, and I supported a similar amendment in the Intelligence Committee when it was offered by the Senator from Florida, Mr. NELSON. Congress should not be giving automatic retroactive immunity to companies that allegedly cooperated with the President's illegal NSA wiretapping program. This provision of the bill is both unnecessary and unjustified, and it will undermine the rule of law. Retroactive immunity is unnecessary because current law already provides immunity from lawsuits for companies that cooperate with the Government's request for assistance, as long as they receive either a court order or a certification from the Attorney General that no court order is needed and the request meets all statutory requirements.

Companies do not need to do their own analysis of the court order or the certification to determine whether the Government is, in fact, acting lawfully. But if requests are not properly documented, FISA instructs the telephone companies to refuse the Government's request and subjects them to liability if they instead decide to cooperate. This framework, which has been in place for 30 years, protects companies that act at the request of the Government, while also protecting the privacy of Americans' communications. Some supporters of retroactively expanding this provision argue that the telephone companies should not be penalized if they relied on high-level Government assurance that the requested assistance was lawful. As superficially appealing as that argument may sound, it utterly ignores the history of the FISA statute.

Telephone companies have a long history of receiving requests for assistance from the Government. That is because telephone companies have access to a wealth of private information about Americans, information that can be a very useful tool for law enforcement. But that very same access to private communications means telephone companies are in a unique position of responsibility and public trust. Yet before FISA, there were basically no rules to help the phone companies resolve this tension, between the Government's request for assistance in foreign intelligence investigations and the companies' responsibilities to their customers. This legal vacuum resulted in serious Government abuse and overreaching.

The Judiciary Committee has heard testimony about this system from Mort Halperin, a former Nixon administration official who was himself the subject of a warrantless wiretap and was involved in the drafting of the FISA law in the 1970s. He testified that before FISA:

> Government communication with the telephone company . . . could not have been more casual. A designated official of the FBI called a designated official of [the company] and passed on the phone number. Within minutes all of the calls from that number were being routed to the local FBI field office and monitored.

Not surprisingly, this casual ad hoc system failed to protect Americans' privacy. The abuses that took place are well documented and quite shocking. With the willing cooperation of the telephone companies, the FBI conducted surveillance of peaceful antiwar protesters, journalists, steel company executives, and even Martin Luther King, Jr., an American hero whose life we recently celebrated.

So Congress decided to take action. Based on the history of and potential for Government abuses, Congress decided it was not appropriate for telephone companies to simply assume that any Government request for assistance to conduct electronic surveillance was legal.

Let me repeat that. A primary purpose of FISA was to make clear once and for all that the telephone companies should not blindly cooperate with Government requests for assistance. At the same time, however, Congress did not want to saddle telephone companies with the responsibility of determining whether the Government's request for assistance was a lawful one. That approach would leave the companies in a permanent state of legal uncertainty about their obligations. So Congress devised a system that would take the guesswork out of it completely. Under that system, which is still in place today, the companies' legal obligations and liability depends entirely on whether the Government has presented the company with a court order or a certification stating that certain basic requirements have been met.

If the proper documentation is submitted, the company must cooperate with the request and will be immune from liability. If the proper documentation has not been submitted, the

company must refuse the Government's request or be subject to possible liability in the courts.

AT&T, which was the only telephone company in existence at the time in the 1970s, was at the table when FISA was drafted. As Mr. Halperin described in his testimony, the company:

received the clarity that it sought and deserved. The rule, spelled out clearly in several places in the legislation and well understood by all, was this: If [the phone company] received a copy of a warrant or certification under the statute, it was required to cooperate. If it did not receive authorization by means outlined in the statute, it was to refuse to cooperate and was to be subjected to state and federal civil and criminal penalties for unlawful acquisition of electronic communications.

The telephone companies and the Government have been operating under this simple framework for 30 years. Companies have experienced, highly trained and highly compensated lawyers who know this law inside and out. In view of this history, it is inconceivable that any telephone companies that allegedly cooperated with the administration's warrantless wiretapping program did not know what their obligations were. It is just as implausible that those companies believed they were entitled to simply assume the lawfulness of a Government request for assistance. This whole effort to obtain retroactive immunity is based on an assumption that does not hold water.

Quite frankly, the claim that any telephone company that cooperates with a Government request for assistance is simply acting out of the sense of patriotic duty doesn't fare much better. Recently, we learned that telecommunications companies actually have cut off wiretaps when the Government failed to promptly pay its bills.

The Department of Justice Office of Inspector General released a report last month finding that ''late payments have resulted in telecommunications carriers actually disconnecting phone lines established to deliver surveillance to the FBI, resulting in lost evidence.'' Since when does patriotic duty come with a price tag? Evidently, assisting the Government's criminal intelligence investigation efforts fell somewhere below collecting a paycheck on the companies' lines of priorities.

Some of my colleagues have argued the telephone companies alleged to have cooperated with the program had a good-faith belief their actions were in accordance with the law. But there is an entire statute in addition to the certification provision that already provides telephone companies with a precisely defined good-faith defense. Under this provision, which is found in section 2520 of title 18, if the company is relying in good faith on a court order or other statutory legislative authorization, they have a complete defense to liability. This is a generous defense, but as generous as it is, it is not unlimited. The court must find that the telephone company determined in good faith that there was a judicial, legislative, or statutory authorization for the requested assistance.

I also wish to address the argument that retroactive immunity is necessary because the telephone companies can't defend themselves in court. When I hear this argument, I can't help but think that this administration has staged the perfect crime: enlist private companies to allegedly provide assistance in an illegal Government program, then prevent any judicial inquiry into the program by claiming a privilege—the so-called state secrets privilege—that not only shields your own actions from scrutiny but enables the companies to evade judicial scrutiny as well by claiming that they are defenseless. All the administration needs to get away with this is Congress's blessing.

That is exactly why immunity is the wrong solution. Think about what we would be doing. We would be saying that in matters of national security, you can break the law with impunity because the courts can't handle national security materials. This is outrageous. Do we really want to create a law-free zone for crimes that involve national security matters? If the Government's use of the state secrets privilege is interfering with holding companies accountable for alleged violations of the law, the solution isn't to shrug and just give up on accountability; the solution is to address the privilege head-on and make sure it doesn't become a license to evade the laws we have passed.

In any event, the notion that the Federal courts can't handle national security matters is insulting to the judges this body has seen fit to confirm, and it is contrary to the facts. Cases involving classified information are decided routinely by the Federal courts. That is why we have a statute—the Classified Information Procedures Act—to govern how courts handle classified materials. Pursuant to that statute, courts have in place procedures that have successfully protected classified information for many years. There is no need to create a ''classified materials'' exception to our justice system.

That brings me to another issue. I have been discussing why retroactive immunity is unnecessary and unjustified, but it goes beyond that. Granting companies that allegedly cooperated with an illegal program this new form of automatic retroactive immunity undermines the law that has been on the books for decades, a law that was designed to prevent exactly the type of actions that allegedly occurred here. Remember, telephone companies already have absolute immunity if they complied with the applicable law, and they have an affirmative defense if they believed in good faith that they were complying with that law. So the retroactive immunity provision we are debating here is necessary only if we want to extend immunity to companies that did not comply with the applicable law and did not even have a good-faith belief that they were complying with it. So much for the rule of law. Even worse, granting retroactive immunity under these circumstances will undermine any new laws we pass regarding Government surveillance. If we want companies to follow the law in the future, it certainly sends a terrible message, and sets a terrible precedent, to give them a ''get out of jail free'' card for allegedly ignoring the law in the past.

I find it particularly troubling when some of my colleagues argue that we should grant immunity in order to encourage the telephone companies to cooperate with the Government in the future. Let's take a close look at that argument.

Telephone companies are already legally obligated to cooperate with a court order, and as I have mentioned, they already have absolute immunity for cooperating with requests that are properly certified. So the only thing we would be encouraging by granting immunity here is cooperation with requests that violate the law. That is exactly the kind of cooperation FISA was supposed to prevent.

Let's remember why: These companies have access to our most private conversations, and Americans depend on them to respect and defend the privacy of these communications unless there is clear legal authority for sharing them. They depend on us to make sure the companies are held accountable for betrayals of that public trust. Instead, this immunity provision would invite the telephone companies to betray that trust by encouraging cooperation with a legal Government program.

Since 9/11, I have heard it said many times that what separates us from our enemies is respect for the rule of law. Unfortunately, the rule of law has taken it on the chin from this administration. Over and over, the President and his advisers have claimed the right to ignore the will of Congress if and when they see fit. Now they are claiming the same right for any entity that assists them in that effort. It is time for Congress to state clearly and unequivocally: When we pass a law, we mean what we say, and we except the law to be followed. That goes for the President, it goes for the Attorney General, and it goes for the telephone companies. The rule of law is not less important after 9/11. We can and we must defeat al-Qaida without breaking the law or sacrificing Americans' basic rights.

We have a choice. The Senate can stand up for the rule of law and let these cases go forward in the courts or we can decide to give our blessing to an administration that broke the law and the companies that allegedly helped it, and we can signal that we stand ready to bail them out the next time they decide to ignore the law. I urge my colleagues not to take that step. Support the rule of law by voting in favor of the Dodd-Feingold amendment No. 3907.

I again thank my colleague from Connecticut for his tremendous leadership on this issue. It has been extremely helpful in this effort. I sincerely thank him.

I ask unanimous consent that my remaining time be reserved.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Madam President, before our colleague from Wisconsin leaves the floor, let me thank him for his leadership on this issue, along with many others associated with this piece of legislation: the reverse targeting and the bulk collection issues which he has raised, which seem so obvious and so clear that you wonder why they even have to be a subject of debate. The clear reaction, in fact, from leading authorities, including those of the intelligence agencies, has been to state categorically that the very actions he wants to exclude from this legislation are prohibited under law. Reverse targeting is unconstitutional, and bulk collection is unattainable. But some in the administration have said: Were bulk collection possible, we believe we have the right to do it. The idea of bulk collection without following the rule of law should violate the sensibilities of every single Member of this body.

This debate and this discussion are very important. This has gone on now since back in December—actually, before then. The Senator from Wisconsin sits on both the Judiciary Committee and the Intelligence Committee, and so he has been deeply involved in these issues for a long time.

What I wish to state at the outset is that these amendments we are offering should not be the subject of some sort of political divide between Democrats, Republicans, liberals, conservatives, moderates, or whatever definitions one wants to apply to the people who serve here. This is about the rule of law. It is about the Constitution of the United States, and the idea that this issue and debate should somehow be divided along those lines ought to be offensive to every single Member of this body. Every single one of us, on the day we raise our right hand and take the oath of office, swear to uphold the Constitution of the United States. That is nothing less than what we are engaged in with this debate.

We have been asked to subscribe to the false dichotomy that in order for us to be more secure as a nation, we must give up some of our rights. The Senator from Wisconsin and the Senator from Connecticut believe very firmly that quite the opposite is true: that if you begin to give up rights, you become less secure, as a people and as a nation. Our deep concern is that that is exactly the path we seem to be following these days with the refusal to adopt the Feingold amendments in dealing with reverse targeting and bulk collections. It is what I am fearful may be the case when we try to strike title II of the Foreign Intelligence Surveillance Act and prohibit the retroactive immunity being sought by the administration and by a handful of telephone companies.

Let me remind our colleagues that when this proposal was first made to the Intelligence Committee, the proposal was to grant immunity to anyone involved in the collection of this information, including those who allegedly authorized it at the executive branch. So while I am critical of what is in the Intelligence Committee bill that has been brought to us by my friend from West Virginia and my friend from Missouri, Senator ROCKEFELLER and Senator BOND, I wish to begin by thanking them for having rejected the administration's earlier request that there be broad-based immunity granted to everyone involved in warrantless wiretapping. But it is instructive to know what the administration wanted at the outset: complete immunity for everyone associated with this vacuum-cleaning operation, who eavesdropped on millions of phone conversations, e-mails, and faxes over the last 5 years.

Why were they seeking immunity for everyone involved in this? I think the answer becomes abundantly clear. There is a great concern that the courts may conclude that, in fact, what was done was illegal and that those who participated in it might be held liable.

Again, I thank the Intelligence Committee for narrowing this request. However, title II of this bill would still provide telecommunications corporations retroactive immunity for their warrantless and possibly—possibly—illegal spying on their very customers.

Much more than a few companies and a few lawsuits are at stake. Equal justice is at stake—justice that does not place some corporations outside of the rule of law.

Openness is at stake—an open debate on security and liberty, and an end to warrantless wiretapping of Americans.

Senator FEINGOLD laid out the history of FISA in eloquent terms this afternoon, going back to the 1970s and describing the genesis of this law that has been amended, I might add, many, many times over the last 30 years. It has been amended periodically to conform to the emerging technologies, the emerging abilities of those who would do us harm, and the emerging strategies that would allow us to collect the information that would minimize their ability to do just that.

So over the years, this body has been asked to modify that law. Almost without exception, I think it is important to point out, this body has amended that law almost unanimously, because all of us recognize that it is critically important that we have the ability to determine who would do us harm, how they would do that harm, and to stop it before it happens. There is not a single Member of this body who is not deeply committed to that goal. We all understand and are deeply committed to the idea that we ought to do everything we can to protect ourselves. But we also understand, and have since the 1970s, the importance not only of gathering the information from those who would do us injury but simultaneously doing that which is also critical for our survival as a nation; that is, protecting the liberties and rights of this country.

They are what makes us unique as a nation. We were really the first Nation that insisted that we were a nation of laws and not men. It was a unique idea in the annals of recorded history; but at the founding of this great Republic, we declared that we were going to do things differently. In fact, many have argued over the years that if we were looking for pure efficiency, this is the last form of government we would have designed. But the Framers of our Constitution were interested in other things than just efficiency. Had efficiency been the goal, they certainly would have thought of a more streamlined system. But they set up a system that not only determined what we did but how we did things: establishing coequal branches of Government—an executive, legislative, and judicial branch—coequal branches of Government, and insisting that there be checks and balances, because the Framers had been through a system in which a king and a handful of people decided the fate of not only their own nation but the colonies they controlled. So they set up this cumbersome, less efficient system because they were deeply determined to protect the rule of law that never allowed one individual or a handful of individuals decide the fate of a nation.

So it is important to understand the genesis of this tension which has existed in our country for more than 200 years: protecting our security and protecting our liberties. I am not suggesting that it is always easy to strike the perfect balance, but over the years we have tried as a nation, from one generation to the next, to try to keep that balance, that tension, in place so that not one side or the other would dominate. In our time, the challenge is to balance our need to gather information with the protection of privacy and the rights that all Americans seek, regardless of geography or ideology.

That has been the tension that confronts us and that is what brings me to this debate, calling upon my colleagues to support the amendment Senator FEINGOLD is offering to strike title II of this legislation.

Retroactive immunity stands against the very principles Senator FEINGOLD has outlined, which I have tried to describe. Under retroactive immunity, the law will forbid some of our fellow citizens from having their day in court.

On what basis are we asked to pass retroactive immunity? On trust. There are classified documents, we are told, that prove the case beyond the shadow of a doubt; but, of course, we are in the allowed to see them. I have served in

this body for 27 years. Yet I am not allowed to see these documents. Retroactive immunity allows the President to stand up and say: Trust me, I know what I am talking about, and you don't.

There is only one way to settle the issue at stake today. Not simply on trust, not the opinion of a handful of individuals—as much as we may admire or like them—but in our courts. We are not judges. We are members of a legislative body.

Real judges and juries—whose courts ought to be our pride, not our embarrassment—deserve to do their jobs and decide these cases. By striking this title of the bill, we would allow them to.

That is all we are asking. Let's have the courts decide. We are not here to assign guilt or innocence. That is not our job as legislators. We are here to hold open the courthouse door, to ensure a fair hearing to American citizens seeking redress. I, for one, will accept whatever verdict results.

This is not a Democratic or Republican issue; this is a rule-of-law issue. It is about striking the right balance between liberty and security. I have absolutely rejected, as I said a few moments ago, the false dichotomy that tells us to choose one over the other. And If a Democratic President were seeking to grant retroactive immunity, I would object as stridently and passionately as I am this afternoon. This should not be a partisan issue. We should all be in favor of allowing our courts to perform their constitutional responsibility to determine whether these companies should be held accountable.

I believe that when surveillance is fully under the rule of law, Americans will only be more secure. To claim otherwise is an insult to our intelligence, our common sense, and our proud tradition of law.

I don't know how many colleagues have seen the movie called ''A Man For All Seasons.'' It is the story of St. Thomas More, who was the only individual in history that I know of who achieved the trifecta of being a lawyer, a politician, and a saint—a rare combination in any generation. In the movie, St. Thomas More was asked if he would be willing to cut down every law in England to get his hands on the devil. More answered: Absolutely not. He said:

> When the last law was down, and the Devil turned 'round on you, where would you hide, the laws all being flat? This country is planted thick with laws, from coast to coast—Man's laws, not God's! And if you cut them down . . . do you really think you could stand upright in the winds that would blow then?

Those laws know no secrecy, Madam President, they know no distinctions for power or wealth. They live, that is, in openness. And when that openness has been defended, when the facts are in light, where they belong, I welcome all my colleagues' ideas in the great and ongoing debate on security and liberty in this century—a debate in the open, and open to us all.

It can begin by adopting this amendment striking retroactive immunity. We can allow the courts to do their jobs to determine whether what happened was legal.

There are those who would argue the telecoms' actions were legal—but none of us know that for sure. If we don't adopt this amendment, we will never know. Whatever happened will be buried for all of history. We will have set the precedent that on the mere word or request of the administration—or any future administration—that telecommunications companies, or others who can collect millions of volumes of data about us, will be allowed to turn it over to the federal government. Maybe the next time it will be medical records or financial records that all of us would like to think are held private—maybe those records, under some argument, will be handed over.

When does this stop? When do we say there is a legal means by which we do this? That has been what FISA has tried to establish for the last three decades—to strike that balance between liberty and security. If we set a precedent with the rejection of this amendment, we open the door, regretfully, for not only this administration but future ones to engage in the very practice that would deprive us of that balance between liberty and security.

So when the vote occurs tomorrow on this amendment that Senator FEINGOLD and I have offered, I urge my colleagues to step out of their partisan roles and consider the example we are setting.

I am also deeply disappointed that the President suggested he would veto the FISA legislation if this amendment passes. The idea that an American President would suggest that we ought to put aside the Foreign Intelligence Surveillance Act merely to protect a handful of companies who seek immunity, and to deny us the opportunity to determine whether what they did was legal, seems to go far beyond what we need to be doing at this hour, where our security is at risk, as we all know.

The best way to handle this, in my view, is to accept and adopt this amendment and send the FISA bill to the President for signature. I believe that despite his warnings to the contrary, he will sign this into law. I don't want to believe an American President would put us at risk and deny these courts the ability to grant warrants and court orders to gather the information we need to keep us secure, all to protect a few corporations from lawsuits.

I have said this repeatedly over the past several months, but it deserves repeating. Not all the telephone companies complied with that request. If they all had, it might strengthen their arguments. But in the end, this is a Republic: the President cannot order us to break the law. And the argument that orders from on high excuse illegal behavior has been thoroughly debunked.

Remember, when one telecom, Qwest, asked for a court order to justify cooperation with the President's surveillance program, it never received one. That ought to be instructive. Why wasn't the court order forthcoming? Why didn't the Administration go to the FISA Courts, which were created exactly for that purpose? Why did some companies say no when others said yes?

For all of these reasons, and the ones eloquently posed by Senator FEINGOLD, we urge our colleagues to accept this amendment. Let the courts do their work and determine the legality or illegality of these actions.

If we are able to do that, I think we will strengthen our country and come closer to maintaining that balance between security and the rule of law that generations throughout our Nation's history have struggled with, doing their utmost to maintain that healthy balance.

To reject this amendment, I think, destroys that balance, does great damage to it. I think we will regret that in the years to come.

With that, I yield the floor to others who may want to be heard on this amendment. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Ms. STABENOW). Without objection, it is so ordered.

AMENDMENT NO. 3927

Mr. LEVIN. Madam President, one of the amendments before us is the Specter-Whitehouse amendment to title II of the FISA Amendments Act of 2007. I urge our colleagues to support the Specter-Whitehouse amendment for the following reasons:

Title II of the bill, as currently written, provides retroactive immunity for telecommunications providers who disclosed communications and other confidential information about their customers at the behest of administration officials. These provisions in the bill before the Senate require the immediate dismissal of any lawsuit against a telecommunications provider based on such disclosure if the Attorney General certifies that an appropriate Government official indicated in writing to the provider that the activity was, one, authorized by the President, and, two, determined to be lawful. It is the words ''determined to be lawful'' that create the problem. Determined by whom?

The way the bill is written, a determination of the Department of Justice or intelligence community officials is sufficient to ensure immunity even if the courts would conclude that the activity was illegal. Dismissal would be

required even if a court would conclude that the disclosure violated the constitutional rights of individuals whose personal information was illegally disclosed. It would be required even if innocent American citizens were damaged by the disclosure or by the compromise of confidential personal information.

The provision in the bill before us granting retroactive immunity is not necessary, it is not wise, and it is not fair. Retroactive immunity is not necessary to ensure the future cooperation of the telecommunications providers who receive legitimate requests for information from the intelligence community. In fact, Congress has already ensured such cooperation in the Protect America Act adopted last August which authorizes the Attorney General or the Director of National Intelligence to direct telecommunications providers to disclose certain information, and that law provides prospective immunity to telecommunications who cooperate with such directives.

Title I of the bill before us appropriately continues to provide prospective immunity to telecommunications providers. Title I states:

> 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 by the Attorney General or the Director of National Intelligence pursuant to the act.

In light of this prospective immunity, which is appropriately in the bill, retroactive immunity is not necessary to ensure the future cooperation of telecommunications providers with legitimate requests for information from the intelligence community.

A retroactive immunity is not wise either because it precludes any judicial review of these important issues. If private parties engaged in illegal activities at the request of senior executive branch officials, that may be an appropriate mitigating factor to be considered in the courts. But to simply grant immunity retroactively may encourage others to engage in illegal activities in the future. That is a bad precedent because it should never be an excuse in a free society that you acted illegally because Government officials asked you to do so.

That leaves the question of equity for telecommunications providers who may have cooperated with administration officials in good faith with the assurance that such cooperation was legal and that they were helping to safeguard our national security.

If one had to choose between a known equitable interest of the telecommunications providers who was prevailed upon in the aftermath of 9/11 to assist the Government by disclosing private customer communications without first conforming with the clear requirement of the FISA law for a warrant approved by the FISA Court before doing so, if—if—one had to choose between that equitable interest and the perhaps uncertain claims of plaintiffs whose conversations may have been eavesdropped upon without their knowledge and with little, if any, provable damage, one might reach the conclusion that retroactive immunity was an appropriate remedy for the telephone companies.

But we do not have to make that choice. We can recognize both the equitable interest of the companies and the possible claims of our citizens, and we can also avoid the terrible precedent of giving retroactive immunity to law violators. We can do that by adopting the Specter-Whitehouse amendment.

How can we protect the telecommunications providers from legal liability if they acted in good faith at the request of the administration without taking the extraordinary step of retroactively eliminating any remedy for possible violations of the Constitution and the laws of the United States? The Specter-Whitehouse amendment before us would accomplish that by immunizing telecommunications providers who acted in good faith based on the assurances of appropriate administration officials from legal liability and at the same time substituting the United States for the telecommunications providers as the defendant in lawsuits based on the actions of those providers. That substitution would safeguard telecommunications providers from liability just as effectively as the retroactive immunity language in title II of the bill.

But unlike the retroactive immunity language of title II the Specter-Whitehouse amendment would not leave persons who can prove they were victims of unlawful or unconstitutional actions without a remedy. On the contrary, the Specter-Whitehouse amendment would ensure that any such innocent victims retain whatever legal rights they have under applicable law, except that the U.S. Government would be substituted for the telecommunications providers as the defendant in such lawsuits. And it is appropriate that the Government be liable rather than the telecommunications providers since the disclosures were allegedly made by the providers in these cases at the request of senior executive branch officials based on appeals to help safeguard U.S. security and assurances that the providers would be protected from liability regardless of the requirements of law.

The argument has been made that we must provide retroactive immunity to the telecommunications providers to ensure the cases against them are immediately dismissed because if the cases are permitted to proceed, vital national security information will be disclosed. Some have even taken the position that the mere existence of this litigation, even without the disclosure of any information, will somehow help the terrorists. But the President has already disclosed the existence of the collection program at issue. It has been discussed in Congress and in the press. The Director of National Intelligence has publicly discussed the program.

Nor will the continuation into the future of cases against telecommunications providers or the U.S. Government, should the Government be substituted as the Specter-Whitehouse amendment would provide as a defendant, that would not make public sensitive collection methods. That is because the courts have numerous tools at their disposal to safeguard sensitive classified information from disclosure during the course of a trial and courts have used these tools throughout our history. Federal courts utilize these tools without compromising the national security when our Government chooses to prosecute terrorists or spies.

Indeed, the recently enacted Military Commissions Act provides the same tools for the protection of classified information in cases brought against alleged terrorists in the military justice system. U.S. citizens who are allegedly damaged at the Government's behest surely should be given as much protection as alleged terrorists.

The administration's willingness to utilize these procedures to safeguard sensitive classified information in the prosecution of alleged terrorists, but not in suits brought for the protection of the rights of American citizens, gives the appearance that retroactive immunity is being sought under this bill as it now stands, not to protect classified information but, rather, to protect the administration itself.

The bottom line is we can protect telecommunications providers from liability for unlawful or unconstitutional disclosures made in good faith reliance on written assurances by high-ranking executive branch officials without retroactively depriving alleged victims of such disclosures of any remedy, if they can demonstrate they have been damaged by illegal practices. The Specter-Whitehouse amendment would enable us to deal fairly with both telecommunications providers and with persons who can prove they were damaged by illegal disclosures of their personal information. I urge our colleagues to support the Specter-Whitehouse amendment as the fair way of protecting both telecommunications providers but also protecting what should be a very basic principle of our Constitution—you cannot and should not needlessly remove a remedy from people who have been injured. To do that retroactively runs contrary to everything we believe in this Constitution about the rights of American citizens to be protected and to have remedies when they are wronged.

AMENDMENT NO. 3941

Mr. FEINGOLD. Madam President, last week the Senate adopted, by voice vote, amendment No. 3941 offered by the vice chairman of the Intelligence Committee, which would require the FISA Court to rule on challenges to the Government's directives within a specified timeframe. I opposed the

amendment because it unnecessarily restricts the court's ability to consider important constitutional and statutory issues related to this legislation. The amendment limits the time for the court's consideration of challenges to directives issued under this law to a mere 30 days, unless ''necessary to comport with the due process clause of the Fifth Amendment.'' There would be no other basis for the court to extend its deliberations to a 31st day.

This amendment could have serious unintended consequences. There may be many decisions that the court can, in fact, make in a relatively short period of time. But there may also be issues that the court will have to consider that could take longer. There have been many questions raised about the meaning of many of the provisions of this bill. The court will certainly be required to address some of these complex statutory interpretation issues. There have also been serious constitutional concerns raised about this bill that the court will need to consider.

This is new legislation that radically changes how surveillance is conducted, and there are numerous complex issues that the court will be called on to resolve. And, unlike this body, the court will have to consider in detail the legality and constitutionality of the law as it is implemented, which could involve extensive factual development, as well as review of relevant precedent.

There are many other reasons why the court would want to extend its deliberations that would not implicate fifth amendment due process rights. A party may seek more time to prepare its pleadings. The court may request more information. The Government may wish to prioritize other more pressing issues or may have a host of strategic reasons for seeking delay; or a crisis or national emergency could require the immediate attention of the intelligence personnel and lawyers assigned to present the Government's case to the court and could occupy the court's time and attention. Under those circumstances, we would surely want the court to focus its attention on the emergency at hand. But if there were also a pending challenge to a directive that the court must decide in just 30 days, it could be faced in a terrible dilemma. And only permitting the court to extend its consideration of a challenge if a refusal to do so rises to the level of a violation of the fifth amendment is far too restrictive.

I would also think there might be some concern that if the court does not have enough time to decide whether to enforce a directive issued by the Government, it could very well simply decide not to.

The Judicial Conference of the United States has made many of these same arguments in a letter sent today to Senators REID and MCCONNELL. The conference warns that the amendment could limit the court's ability to consider complex issues or could force the court to divert its attention from other pressing matters. Indeed, the letter warns that ''the national security significance of the cases before the FISC means there is a chance this provision could force the FISC by statute to forego consideration of another matter of paramount importance.''

This amendment could seriously shortchange the court's ability to determine whether the Government is acting legally or whether the bill is constitutional, on its face or as implemented in a particular situation. For that reason, I opposed this amendment.

AMENDMENT NO. 3913

Mr. LEAHY. Madam President, the bill we are now considering will provide an enormous expansion of the government's ability to conduct warrantless surveillance. I support providing our intelligence agencies with the flexibility they need to surveil foreign targets that may be intending us harm, but we must be similarly vigilant in making certain that this surveillance is limited to its intended scope.

I commend Senator FEINGOLD in crafting an amendment that would prohibit what is known as ''reverse targeting'' and would ensure that this new surveillance is directed only toward its overseas targets and not toward surveillance of innocent Americans without a court order. The Intelligence Committee's bill, S. 2248, requires the government to seek an order from the FISA Court only when ''the'' purpose of the government's acquisition is the targeting of Americans inside of the United States. I fear that the government will read into this language a loophole and it may justify eavesdropping on American's private communications, without any court order, as long as they have some interest in an overseas ''target,'' even if a significant purpose of the interception is to collect the communications of a person in the United States. Is this fear legitimate? I think so, given this administration's history of convoluted, disingenuous legal interpretation. We must be clear in our language, because we know what they will do if we are not.

Senator FEINGOLD's provision would clarify that if the government intercepts the communications of a person overseas but ''a significant purpose'' of the surveillance is to collect the communications of the U.S. person with whom the person overseas is communicating, the government must get a court order. This is an important distinction. In light of the sweeping powers we are granting to the government to conduct surveillance without up front court review, we must also cabin the scope of the government's power to eavesdrop on the communications of innocent Americans.

AMENDMENT NO. 3915

The authorities and procedures in S. 2248 would permit the FISA Court to review government targeting and minimization procedures. If, however, the Court finds certain aspects of those procedures to be inadequate—even grossly inadequate—S. 2248 provides no authority to restrict the use of information already collected using those procedures. That means that the government would be free to access, use, and share information about private communications that was collected in violation of the law.

Senator FEINGOLD's amendment would ensure that the Court has the authority to stop a continuation, and perhaps escalation, of the harm caused by the government's use of illegal procedures. This provision would limit the government's use and dissemination of illegally obtained information if the FISA Court later determines that the procedures were not reasonably designed to target people outside of the United States or to adequately minimize the use of information about U.S. persons. It is important to note that, under this provision, if the government acts to address the Court's concerns and correct these procedures it would then be free to use and disseminate the information it acquired.

This is not a novel application of law under FISA. FISA's existing emergency provision holds that if the government begins emergency surveillance without a warrant, and the FISA Court then determines the surveillance to be unlawful, the government cannot use and disseminate the information it acquired except under very limited circumstances. Senator FEINGOLD's amendment simply applies these reasonable safeguards to the new and broadly expanded authority we are now giving to the government. This provision represents a crucial safeguard for the protection of Americans' privacy rights.

AMENDMENT NO. 3927

I strongly oppose the blanket grant of retroactive immunity in the Intelligence Committee bill. This administration violated FISA by conducting warrantless surveillance for more than 5 years. They got caught. If they had not, they would probably still be doing it. In the wake of the public disclosure of the President's illegal surveillance of Americans, the administration and the telephone companies are being sued by citizens who believe their privacy and constitutional rights have been violated. Now, the administration is trying to force Congress to terminate those lawsuits in order to insulate itself from accountability. We should not allow this to happen.

The administration knows that these lawsuits may be the only way that it will ever be called to account for its flagrant disrespect for the rule of law. In running its illegal program of warrantless surveillance, the administration, relying on legal opinions prepared in secret and shown to only a tiny group of like-minded officials, ensured the administration received the advice they wanted. Jack Goldsmith, who came in briefly to head the Justice Department's Office of Legal Counsel described the program as a ''legal

mess.'' This administration does not want a court to have the chance to look at this legal mess. Retroactive immunity would assure that they get their wish.

The Judiciary Committee and Intelligence Committee tried for well over a year and a half to obtain access to the information that our members needed to evaluate the administration's arguments for immunity. Indeed, over a year ago Chairman SPECTER was prepared to proceed to subpoena information from the telephone companies in light of the administration's stonewalling. It was only just before the Intelligence and Judiciary Committees' consideration of this bill that committee members finally obtained access to a limited number of these documents. Senators who have reviewed the information have drawn very different conclusions.

Now this matter is before all Senators and it is well past time for all Members to have access to the information they need to make informed judgments about the provisions of these bills. The majority leader wrote to the administration stating that Members of the Senate need that access. We have had no response—the administration has ignored the request. It is clear that they do not want to allow Senators to appropriately evaluate these documents and draw their own conclusions.

There are reports in the press that at least one telecommunications carrier refused to comply with the administration's request to cooperate with the warrantless wiretapping. All Senators should have the opportunity to know these facts, so they can make an informed judgment about whether there were legitimate legal concerns that other cooperating telecommunications companies should have raised. Indeed, if other carriers had been more careful in their legal analysis, and had raised these concerns, would the administration have had a greater incentive to come to the Congress and get the law changed? Would we have been spared five long years of illegal behavior by this administration?

I have drawn very different conclusions than Senator ROCKEFELLER about retroactive immunity. I agree with Senator SPECTER and many others that blanket retroactive immunity, which would end ongoing lawsuits by legislative fiat, undermines accountability. Senator SPECTER has been working diligently first as the chairman of the Judiciary Committee and now as its ranking member to obtain judicial review of the legality of the warrantless wiretapping of Americans from 2001 into last year. The check and balance the judiciary provides in our constitutional democracy has an important role to play and should be protected. Judicial review can and should provide a measure of accountability.

We hear from the administration and some of our colleagues that we must grant immunity or the telephone companies will no longer cooperate with the Government. Senators should understand that even if we do not grant retroactive immunity, telecommunications carriers will still have immunity for actions they take in the future. Their cooperation in the future will still be required by legal orders and they will not be subject to liability for doing what the law requires. If they follow the law, they have immunity.

We have heard some people argue that the telephone companies should get immunity because they complied with the Government's requests to engage in warrantless surveillance out of patriotism. I do not doubt the patriotism of the executives and employees of these companies, but this month we learned that these companies cut off wiretaps, including wiretaps of terrorists, because the FBI failed to pay its telephone bills. How can this administration talk repeatedly, on the one hand, about the importance of FISA surveillance, and on the other hand, fail to pay its phone bills and jeopardize this critical surveillance. But beyond that, the fact that carriers were willing to cut off surveillance when they were not paid—presumably some of the same carriers that agreed to conduct warrantless surveillance—undercuts the argument about their patriotic motives.

As one former FBI special agent has said, ''It sounds as though the telecoms believe it when the FBI says the warrant is in the mail, but not when they say the check is in the mail.''

I believe the rule of law is important in protecting the rights of Americans from unlawful surveillance. I do not believe that Congress can or should seek to take those rights and those claims from those already harmed. Moreover, ending ongoing litigation eliminates perhaps the only viable avenue of accountability for the Government's illegal actions. Therefore, I say again: I oppose blanket retroactive immunity.

I do support and will vote for the amendment that Senators SPECTER and WHITEHOUSE will offer on ''substitution.'' This amendment would place the Government in the shoes of the private defendants that acted at its behest and let it assume full responsibility for illegal conduct. The Specter-Whitehouse amendment contains an explicit waiver of sovereign immunity, which will allow the lawsuits to proceed against the United States, and it makes other changes designed to assure that the Government does not have advantages as a defendant that the carriers would not have. While I see no need to deal with the issue of lawsuits against the providers in this Congress, I believe that substitution is a fairer means of dealing with these lawsuits than full retroactive immunity, because it would give the plaintiffs their day in court, and it would allow for a measure of accountability for the administration's actions in the years following 9/11.

This administration violated FISA by conducting warrantless surveillance for more than 5 years. They got caught, and the telecommunications carriers got sued. Now, the administration insists that those lawsuits be terminated by Congress, so that it does not have to answer for its actions. Retroactive immunity does more than let the carriers off the hook. It shields this administration from any accountability for conducting surveillance outside of the law. It would stop dead in their tracks the lawsuits that are now working their way through the courts, and leave Americans whose privacy rights have been violated with no chance to be made whole. These lawsuits are perhaps the only avenue that exists for an outside review of the Government's actions. That kind of assessment is critical if our Government is to be held accountable. That is why I do not support legislation to terminate these legal challenges and I will vote to strike it.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2008—CONFERENCE REPORT

Mr. REID. Mr. President, I ask unanimous consent that the Senate now proceed to the conference report to accompany H.R. 2082, the Intelligence authorization conference report.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The bill clerk read as follows:

The committee of conference on the disagreeing votes of the two houses on the amendment of the Senate to the bill (H.R. 2082), to authorize appropriations for fiscal year 2008 for intelligence and intelligence-related activities of the United States Government, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of December 6, 2007, beginning at page H14462.)

CLOTURE MOTION

Mr. REID. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule

XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the conference report to accompany H.R. 2082, Intelligence Authorization Act.

John D. Rockefeller, IV, Dianne Feinstein, Kent Conrad, E. Benjamin Nelson, Russell D. Feingold, Barbara A. Mikulski, Ron Wyden, Ken Salazar, Mark Pryor, Patty Murray, Benjamin L. Cardin, Frank R. Lautenberg, Jack Reed, Sheldon Whitehouse, Harry Reid, Carl Levin, Bill Nelson.

Mr. REID. Mr. President, I ask unanimous consent the mandatory quorum call be waived.

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

FISA AMENDMENTS ACT OF 2007—Continued

Mr. REID. Mr. President, I ask unanimous consent that the Senate resume consideration of S. 2248.

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

Mr. REID. Mr. President, I just finished a conference with the distinguished Republican leader, and we both believe this is the best way to go. We will, at some time, finish the intelligence conference report one way or the other, and following that, we will likely move to the Indian health bill to try to complete that.

We have had a productive day. It is my understanding there are only two speakers left on the FISA legislation, and that is Senator DODD and Senator SPECTER. If there are others, they should notify the cloakroom forthwith.

We have eight votes we are going to do tomorrow, and staff is working on a consent to get to those votes. If we finish them, regardless, it would be better if we do this by consent. We are going to start the votes early in the morning. There will be no morning business tomorrow. We have eight votes to do tomorrow and complete a lot of talk on this bill, and that way we can send it to the House very quickly and they will come back and tell us something, we hope, by the end of the week.

We all hope it is not necessary that we have an extension, but time will tell.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, I ask unanimous consent that when the Senate resumes S. 2248 on Tuesday morning, February 12, the sequence of votes on remaining amendments occur in the following order: Whitehouse 3920, subject to a 60-vote threshold; Feinstein 3910, subject to a 60-vote threshold; Feingold 3979; Dodd 3907; Feingold 3912; Bond-Rockefeller 3938, as modified; Specter-Whitehouse 3927; Feinstein 3919, with a 60-vote threshold; and that each leader control a total of 10 minutes of debate time to be used prior to any of the votes; that the provisions of the previous order governing debate limitations and vote limitations remain in effect.

We are going to do as many of these as we can before the weekly party conferences. With a little bit of luck, we can finish all of them.

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

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

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

MORNING BUSINESS

Mr. DURBIN. Mr. 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.

NATIVE AMERICAN HOUSING AND SELF-DETERMINATION ACT

Mr. DODD. Mr. President, I come to the floor today to discuss the Banking Committee's action on S. 2062, the Native American Housing Assistance and Self-Determination Reauthorization Act of 2007. Senator SHELBY and I agreed to discharge this bill from the Banking Committee, with an amendment, to help move the bill along.

This legislation reauthorizes the Native American Housing and Self-Determination Act, NAHASDA, which provides critical funds for housing Native Americans who suffer significant and unique housing problems. According to HUD data, almost one-third of Native Americans have severe housing burdens. They live in overcrowded conditions, lack basic plumbing and utilities, or pay over half of their income for their housing costs. NAHASDA is the primary way that Indian tribes are assisted in addressing these critical housing needs.

The amendment drafted by Senator SHELBY and I includes a provision to clarify that this bill should not interfere with ongoing court cases regarding funding allocations. I want to acknowledge the contributions of Senators TESTER and ENZI in working on this provision. In addition, the amendment helps to retain the requirements that funds be used for those Native Americans in the worst housing situations and that funds continue to be used to increase affordable housing opportunities.

I look forward to working with my colleagues to quickly pass S. 2062 as amended.

SCHOOL SAFETY AND LAW ENFORCEMENT IMPROVEMENT ACT

Mr. LEAHY. Mr. President, it has now been nearly 10 months since the horrific incident at Virginia Tech resulted in the tragic deaths of 32 students and faculty members, and serious injuries to many other innocent victims. During that time, we have witnessed a barrage of new incidents involving threatening conduct and, too often, deadly acts of violence at our schools and college campuses nationwide.

Just in the last few days tragedy has struck at one of our Nation's high schools and on a university campus. Today's press reports indicate that a student at Mitchell High School in Memphis, TN, is in critical condition after a violent incident in the school's cafeteria. Just this past Friday, a female student killed two other women, and then herself, inside a classroom on the campus of Louisiana Technical College in Baton Rouge. This terrible incident could easily have been even more deadly: there were nearly 20 people in the classroom at the time.

The Senate has so far failed to take up and pass the School Safety and Law Enforcement Improvement Act of 2007, S. 2084, which the Judiciary Committee reported last September to help improve school safety. This comprehensive legislation should be considered and passed without further delay.

In originating the bill over 6 months ago, the Judiciary Committee showed deference to Governor Tim Kaine and the task forces at work in Virginia, and sought to complement their work and recommendations. Working with several Senators, including Senators BOXER, REED, SPECTER, FEINGOLD, SCHUMER, and DURBIN, the committee originated this bill and reported it at the start of the 2007 academic year. My hope was that Congress would adopt these critical school safety improvements last fall.

Since this bill passed out of the Judiciary Committee, we have seen tragedy at Louisiana Technical College, Delaware State, University of Memphis, SuccessTech Academy in Cleveland, OH, as well as incidents in California, New York, Pennsylvania, and Oregon, to name just a few. I, again, urge the Senate to proceed to consider this comprehensive package of school safety measures. It includes sensible yet effective safety improvement measures supported by law enforcement across the country. We should be doing all that we can to help.

Last October, a troubled student wearing a Fred Flintstone mask and carrying a rifle through campus was arrested at St. John's University in Queens, NY, prompting authorities to lock down the campus for 3 hours. The day after that incident, an armed 17-

year-old on the other side of the country in Oroville, CA, held students hostage at Las Plumas High School, also resulting in a lock-down. Around that same time, an armed student suspected of plotting a Columbine-style attack on fellow high school students was arrested in Norristown, PA. The students in these situations were lucky and escaped without injury.

University of Memphis student Taylor Bradford was not so lucky. He was killed on campus last September in what university officials believe was a targeted attack. He was 21 years old. Shalita Middleton was not so lucky. She died last October from injuries she sustained during the Delaware State incident. She was 17 years old. Nathaniel Pew was not so lucky. He was wounded at Delaware State. High school teachers Michael Grassie and David Kachadourian and students Michael Peek and Darnell Rodgers—all of whom were wounded by a troubled student at SuccessTech Academy last October—were not so lucky. And the two female students killed this past Friday in Baton Rouge were not so lucky.

The School Safety and Law Enforcement Improvement Act responds directly to incidents like these by addressing the problem of violence in our schools in several ways. The bill authorizes Federal assistance for programs to improve the safety and security of our schools and institutions of higher education, provides equitable benefits to law enforcement serving those institutions including bulletproof vests, and funds pilot programs to develop cutting-edge prevention and intervention programs for our schools. The bill also clarifies and strengthens two existing statutes—the Terrorist Hoax Improvements Act and the Law Enforcement Officers Safety Act—which are designed to improve public safety.

Specifically, the bill would improve the safety and security of students both at the elementary and secondary school level and on college and university campuses. The K–12 improvements are drawn from a bill that Senator BOXER introduced last April, and I want to thank Senator BOXER for her hard work on this issue. The improvements include increased funding for much-needed infrastructure changes to improve security as well as the establishment of hotlines and tip-lines, which will enable students to report potentially dangerous situations to school administrators before they occur.

These improvements can save lives. After the four students and teachers were wounded at SuccessTech Academy, the press reported that parents had been petitioning to get a metal detector installed and additional security personnel added, and that the guard who was previously assigned to the school had been removed 3 years ago. In fact, at the time, the entire city of Cleveland had just 10 metal detectors that rotated throughout the city's more than 100 schools. Title I of the bill would enhance the ability of school districts to apply for and receive grant money to fund the installation of metal detectors and the training and hiring of security personnel to keep our kids safe.

To address the new realities of campus safety in the wake of Virginia Tech and more recent college incidents, title I also creates a matching grant program for campus safety and security to be administered out of the COPS Office of the Department of Justice. The grant program would allow institutions of higher education to apply, for the first time, directly for Federal funds to make school safety and security improvements. The program is authorized to be appropriated at $50,000,000 for the next 2 fiscal years. While this amounts to just $3 per student each year, it will enable schools to more effectively respond to dangerous situations on campus.

The bill would also make sworn law enforcement officers who work for private institutions of higher education and rail carriers eligible for death and disability benefits, and for funds administered under the Byrne Grant program and the bulletproof vest partnership grant program. Providing this equitable treatment is in the best interest of our Nation's educators and students and will serve to place the support of the Federal Government behind the dedicated law enforcement officers who serve and protect private colleges and universities nationwide. I commend Senator JACK REED for his leadership in this area.

The bill helps law enforcement by making improvements to the Law Enforcement Officers Safety Act of 2003, LEOSA. These amendments to existing law will streamline the system by which qualified retired and active officers can be certified under LEOSA. It serves us all when we permit qualified officers, with a demonstrated commitment to law enforcement and no adverse employment history, to protect themselves, their families, and their fellow citizens wherever those officers may be.

The bill focuses on prevention as well, by incorporating the PRECAUTION Act at the request of Senators FEINGOLD and SPECTER. This provision authorizes grants to develop prevention and intervention programs for our schools.

Finally, the bill incorporates the Terrorist Hoax Improvements Act of 2007, at the request of Senator KENNEDY.

The Senate should move forward and act. The Virginia Tech Review Panel—a body commissioned by Governor Kaine to study the Virginia Tech tragedy—recently issued its findings based on a 4-month long investigation of the incident and its aftermath. This bill would adopt a number of recommendations from the Review Panel aimed at improving school safety. We must not miss this opportunity to implement these initiatives nationwide, and to take concrete steps to ensure the safety of our kids. I hope the Senate will promptly move forward to invest in the safety of our students and better support law enforcement officers across the country by considering and passing the School Safety and Law Enforcement Improvement Act of 2007.

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

INAUGURATION OF PRESIDENT-ELECT LEE MYUNG-BAK

• Mr. OBAMA. Mr. President, in just 2 weeks President-elect Lee Myung-bak will be inaugurated as the next President of South Korea. His inauguration offers a fresh opportunity to reaffirm and reinvigorate the U.S.-South Korea relationship for a new era.

The U.S.-ROK alliance has been a remarkably strong and successful one. Forged in blood during the Korean war more than a half-century ago, the alliance has sustained itself through the crucible of the cold war and remains central to U.S. security policy in East Asia. Our bonds have only deepened through the extensive social and cultural ties that have formed between our two countries, including 100,000 Americans who live in Korea, and the 2 million Korean-Americans who enrich our society through their classic American ethic of hard work, strong families, and tight-knit church communities.

Nonetheless, I do not think it is an overstatement to say that the U.S.-Korea relationship has been adrift in recent years. At the heart of it have been our respective approaches to North Korea. The Bush administration has been divided within itself on how to deal with Pyongyang, branding it a member of the ''Axis of Evil'' and refusing bilateral discussions with it before subsequently reversing course. This unsteady approach not only has allowed North Korea to expand its nuclear arsenal as it has resumed reprocessing of plutonium and tested a nuclear device. It also has understandably caused anxiety in South Korea, as its leaders and people have tried to figure out what the Bush administration policy is.

I have no illusions about North Korea, and we must be firm and unyielding in our commitment to a nonnuclear Korean peninsula. In the process we must pay attention to the interests of the South Korean people to ensure that we move forward in unity and common purpose.

The U.S.-Korea economic relationship has also benefited both nations and deepened our ties. I look forward as well to supporting ways to increase our bilateral trade and investment ties through agreements paying proper attention to our key industries and agricultural sectors, such as autos, rice, and beef, and to protection of labor and environmental standards. Regrettably,

the U.S.-Korea Free Trade Agreement does not meet this standard.

Given the importance of getting this relationship right I would encourage President Bush to invite President Lee to the White House as early as possible after his inauguration as a signal of the commitment of the United States to the alliance, and to reaffirm the importance of the alliance to the United States. In the process, we need to work with South Korea on a common vision for the alliance to meet the challenges of the 21st century, not only those on the Korean Peninsula but in the region and beyond.

An alliance that once was built solely on defense against common threats must today be built also on our shared values and strong mutual interests. I congratulate President-elect Lee on his election, pass on my good wishes for him and the Korean people for his inauguration, and honor the Korean people for their vibrant democracy. I look forward to the opportunity to work with him in the years ahead to replenish and revitalize this crucial relationship.●

ADDITIONAL STATEMENTS

CARROLL COLLEGE FIGHTING SAINTS

● Mr. BAUCUS. Mr. President, the December 24, 2007, ''Year in Pictures'' edition of Sports Illustrated featured a mud-soaked and elated Brandon Day on the cover. Day is a junior linebacker for the Fighting Saints of Carroll College in my hometown of Helena, MT. This amazing image was captured by photographer John Russell following the Fighting Saints fifth National Association of Intercollegiate Athletics football title in the past six seasons on December 15, 2007, in Savannah, TN.

The story of this team and the cover photo on Sports Illustrated has really moved me. With all the negative stories recently in the sports world, it was both heartening and appropriate for the magazine to honor the spirit of intercollegiate athletics by shining the spotlight on such a hard-working and deserving group of student athletes. The young men that make up Carroll's football squad truly embody the best of these ideals and Montana values. They have worked hard both on and off the field and have achieved not only athletic glory, but also success in the classroom and have given much back to the Helena community and their hometowns. Coming from small towns across Montana and the West, these student athletes certainly don't demand or expect this kind of recognition for their achievements, but they certainly are worthy of the praise. This group of young men are great ambassadors for the college they so proudly represent and are terrific role models for their fellow students and the many younger kids who look up to them.

This strength of character is certainly a tribute to their fine and caring coach, Mike Van Diest, who has taught his players that devotion to school, family, and faith come before football. He demands excellence from his players both on and off the field, as does the president of the school, Dr. Thomas Trebon. Dr. Trebon recently wrote a letter to Sports Illustrated that tells the story of the Fighting Saints. I thank Dr. Trebon for all of his hard work and leadership at Carroll College, and I look forward to cheering on the Saints again in 2008. I know that they will continue to make Montana proud.

Mr. President, I ask to have the letter from Dr. Trebon printed in the RECORD.

The material follows.

DEAR SPORTS ILLUSTRATED: All of Montana is thrilled by the SI ''2007 Pictures of the Year'' front cover featuring Carroll College junior linebacker Brandon Day's euphoric reaction to the Fighting Saints' fifth NAIA National Football Championship win.

The untold story about the Saints found honest reflection in the SI cover photo, with Day and his victorious teammates soaked in mud while overcome with joy. It's a story about humble happiness through hard work, where every standout member of the Saints who receives recognition promptly points to his teammates as the real reason for their success. It's the story of Fighting Saint Luke DenHerder, who returned to the gridiron after beating a lethal cancer, while his fellow student-athletes cheered him and even shaved their heads in solidarity during his chemotherapy. It's the story of a team comprised of men hailing primarily from rural Western towns, ranches and farms, from struggling middle-class families, who know the meaning of hard work and who haven't seen much glory in return. Until now.

Carroll's story is about two-time NAIA National Coach of the Year (2003 and 2005) Mike Van Diest, who led the Saints to all five national championship wins, all while demanding that our athletes' priorities must be God first, family second, school third and football last. Indeed, the press corps following our team to Tennessee took more photos of our players studying for their final exams and volunteer reading to school children in Savannah, Tenn., than engaged in pre-game practice. This fall, seven Fighting Saints were named national Daktronics-NAIA Football Scholar-Athletes, the team maintains a grade point average over 3.2, and nearly half of our football squad is selected yearly as All-Academic honorees in the Frontier Conference. Yet, the true story about the Saints was told before the clock ran out during the championship game. After each play, our Carroll student-athletes showed their commitment to sportsmanship by helping their opponents up from tackles and shaking hands with the University of Sioux Falls players.

In these days when more of us long for a return to civility and yearn to see our star athletes and athletic programs meet the high standards of role models, SI's cover photo was distinctly gratifying. In one shot, photographer John Russell captured both a moment of athletic triumph and distilled our dream of bringing back the values of simpler times, when good men from humble beginnings win out in the end and become heroes.

THOMAS TREBON,
President, Carroll College.●

UNI-CAPITOL WASHINGTON INTERNSHIP PROGRAMME 2008

● Mr. CRAPO. Mr. President, I am proud to be involved for a second year in the Uni-Capitol Washington Internship Programme, an exchange program in which outstanding college students from Australia's top universities compete to serve as interns for the U.S. Congress. The program is in its ninth year of bringing the Washington experience to our friends from Australia, firsthand. In addition to working in congressional offices, the program provides students with a number of other opportunities and activities, including visits to historic sites, visits to government agencies, meetings with government leaders, and educational events.

This year, Suzi Allan, a student from the University of Canberra, Australia, is taking a 2-month hiatus from her communications degree to help me serve Idaho constituents. Of the program, Suzi says, ''The UCWIP has given me the unique opportunity to gain firsthand insight into the world's most influential government. I have had incredible experiences while working in Senator Crapo's office and have enjoyed learning more about the U.S. Congress. Working in the heart of America's political establishment is a fantastic experience that I will always remember.''

This year, I would again like to thank Director Eric Federing and his wife, Daphne, for their continued commitment to enlarging the educational experience of students in their home country of Australia. Free nations have a responsibility to work together to promote the liberty that have provided social, cultural, and economic success. Bringing young people together in their formative educational years promotes these partnerships for prosperity across national lines and highlights our Nations' shared goals and interests. I am pleased to be able to participate in this well-crafted and successful program.●

TRIBUTE TO REVEREND WEBSTER TWO HAWK

● Mr. JOHNSON. Mr. President, it is my pleasure to speak today to recognize an outstanding lifelong resident of South Dakota, Rev. Webster Two Hawk.

Recently, Reverend Two Hawk marked 50 years of service to his church and his faith. His congregation is the St. Peter's Episcopal Church in Fort Pierre, SD, where he has been a volunteer priest for the last 27 years. Reverend Two Hawk, now retired, has a long list of accomplishments throughout his lifetime.

Reverend Two Hawk was born and lived near White River, SD, until going to schools in Todd County. Upon completion of high school in Mission, SD, now Todd County High School, he attended the University of South Dakota, my alma mater, where he graduated in 1952 with a degree in business administration. Upon leaving college, Two Hawk enlisted in the U.S. Army to serve in the Korean war. Upon his return from service, he attended Kenyon College in Ohio where he graduated

with a master's degree in divinity and was ordained at St. Peter's Church in Lake Andes on the Yankton Sioux Reservation. He served there 6 years as priest before moving to the Standing Rock Sioux Reservation for another 6 years and ultimately returning home to the Rosebud Sioux Reservation.

His return home led him down a different path of service he was elected chairman of the Rosebud Sioux Tribe. He had many accomplishments during his tenure as leader of the tribe; most notably was the opening of Sinte Gleska University in 1971. His desire to serve also led him to work for the Aberdeen Area Indian Health Service and was also appointed by former Gov Bill Janklow as the commissioner for the South Dakota Tribal Government Relations Office from 1996 until 2003. As well, he serves on the board of directors for the Wakpa Sica Reconciliation Place.

Currently, Reverend Two Hawk is working to rebuild the congregation in his hometown of White River, SD. I take this opportunity to commend Rev. Webster Two Hawk for his lifetime of service to his congregation and to his tribe. Both are certainly thankful for his efforts.●

TRIBUTE TO KEN HARPER

● Mr. PRYOR. Mr. President, today I wish honor Ken Harper, a fellow Arkansan who has embraced the spirit of patriotism. Not only has he served our country in the military, but he has created inspirational poetry and a special commemorative gift to veterans. Ken Harper has a unique talent for writing poetry of a ''military significance'' and ''significance of character'' that gives inspiration to those who read it.

Ken Harper proudly served in the U.S. Navy and the U.S. Army. He served a tour of duty with the U.S. Navy beginning in 1979. In 1985, he chose to continue his military career by serving in the U.S. Army. After his military service was completed, Ken still had the desire to serve.

Inspired by the fallen sailors and marines of Pearl Harbor, Ken requested a few American flags to be flown from military memorials and ships on behalf of some retired veterans he knew. The success of this motivated him to have more flags flown in dedication of other veterans. Later, he would have two special flags he claims as his own raised on several naval ships and even on board a NASA space ship.

Because Ken Harper has selflessly honored so many, today we honor him for his efforts, talents, and service to our country.●

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 which were referred to the Committee on Armed Services.

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

ECONOMIC REPORT OF THE PRESIDENT DATED FEBRUARY 2008 WITH THE ANNUAL REPORT OF THE COUNCIL OF ECONOMIC ADVISERS FOR 2008—PM 37

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Joint Economic Committee:

To the Congress of the United States:

Over the past 6 years of economic expansion, the American economy has proven its strength and resilience. Job creation grew uninterrupted for a record period of time, inflation remains moderate, unemployment is low, and productivity continues to grow. The economy is built upon a strong foundation, with deep and sophisticated capital markets, flexible labor markets, low taxes, and open trade and investment policies.

Americans should be confident about the long-term strength of our economy, but our economy is undergoing a period of uncertainty, and there are heightened risks to our near-term economic growth. To insure against these risks, I called upon the Congress to enact a growth package that is simple, temporary, and effective in keeping our economy growing and our people working.

There is more we should do to strengthen our economy. First, we must keep taxes low. Unless the Congress acts, most of the tax relief that we have delivered over the past 7 years will be taken away and 116 million American taxpayers will see their taxes rise by an average of $1,800. The tax relief of the past few years has been a key factor in promoting economic growth and job creation and it should be made permanent. We must also work together to tackle unfunded obligations in entitlement programs such as Social Security, Medicare, and Medicaid. I have laid out a detailed plan in my Budget to restrain spending, cut earmarks, and balance the budget by 2012 without raising taxes.

Second, we must trust Americans with the responsibility of homeownership and empower them to weather turbulent times in the market. My Administration has acted aggressively to help credit-worthy homeowners avoid foreclosure. We launched a new initiative called FHASecure to help families refinance their homes. I signed legislation to protect families from higher taxes when lenders forgive a portion of their home mortgage debt. We have also brought together the HOPE NOW alliance, which is helping many struggling homeowners avoid foreclosure by facilitating the refinancing and modification of mortgages. The Congress can do more to help American families keep their homes by passing legislation to reform Freddie Mac and Fannie Mae, modernize the Federal Housing Administration, and allow State housing agencies to issue tax-free bonds to help homeowners refinance their mortgages.

Third, we must continue opening new markets for trade and investment. We have an unprecedented opportunity to reduce barriers to global trade and investment through a successful Doha round. The Congress should also approve our pending free trade agreements. I thank the Congress for its approval of a good agreement with Peru, and ask for the approval of agreements with Colombia, Panama, and South Korea. These agreements will benefit our economy by providing greater access for our exports and supporting good jobs for American workers, and they will promote America's strategic interests. I have asked the Congress to reauthorize and reform trade adjustment assistance so that we can help those workers who are displaced by trade to learn new skills and find new jobs.

Fourth, we must make health care more affordable and accessible for all Americans. I have proposed changes in the tax code that would end the bias against those who do not receive health insurance through their employer and would make it easier for many uninsured Americans to obtain insurance. This reform would put private health care coverage within reach for millions. My Budget also improves access to health care by increasing the power of small employers, civic groups, and community organizations to negotiate lower-priced health premiums. These policies would encourage competition among health plans across State lines, help reduce frivolous lawsuits that increase patients' costs, and promote the use of health savings accounts.

Fifth, we must increase our energy security and confront climate change. Last year, I proposed an ambitious plan to reduce U.S. dependence on oil and help cut the growth of greenhouse gas emissions. I am pleased that the Congress responded, and I was able to sign into law a bill that will increase fuel economy and the use of alternative fuels, as well as set new efficiency mandates on appliances, light bulbs, and Federal Government operations. In my State of the Union Message, I proposed that we take the next steps to accelerate technological breakthroughs by funding new technologies to generate coal power that captures carbon emissions, advance emissions-free nuclear power; and invest in advanced battery technology and renewable energy. I am also committing $2

billion to a new international clean technology fund that will help developing nations make greater use of clean energy sources. Additionally, my Budget proposes to protect the economy against oil supply disruptions by doubling the capacity of the Strategic Petroleum Reserve.

Finally, a strong and vibrant education system is vital to maintaining our Nation's competitive edge and extending economic opportunity to every citizen. Six years ago, we came together to pass the No Child Left Behind Act, and no one can deny its results. Now we must work together to increase accountability, add flexibility for States and districts, reduce the number of high school dropouts, and provide extra help for struggling schools.

Many of these issues are discussed in the 2008 Annual Report of the Council of Economic Advisers. The Council has prepared this Report to help policymakers understand the economic conditions and issues that underlie my Administration's policy decisions. By relying on the foundation and resilience of our economy, trusting the decisions of individuals and markets and pursuing pro-growth policies, we should have confidence in our prospects for continued prosperity and economic growth.

GEORGE W. BUSH.
THE WHITE HOUSE, *February 2008*.

MEASURES PLACED ON THE CALENDAR

The following bills were read the second time, and placed on the calendar:

S. 2616. A bill to authorize certain programs and activities in the Forest Service, the Department of the Interior, and the Department of Energy, and for other purposes.

S. 2596. A bill to rescind funds appropriated by the Consolidated Appropriations Act, 2008, for the City of Berkeley, California, and any entities located in such city, and to provide that such funds shall be transferred to the Operation and Maintenance, Marine Corps account of the Department of Defense for the purposes of recruiting.

S. 2619. A bill to protect innocent Americans from violent crime in national parks.

S. 2615. A bill to extend the Protect America Act of 2007 for 15 days.

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. SCHUMER:

S. 2621. A bill to amend the Terrorism Risk Insurance Act of 2002, to temporarily reduce the insurer deductibles for insurers sustaining insured losses from large terrorism events; to the Committee on Banking, Housing, and Urban Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. REID (for himself, Mr. MCCONNELL, Mrs. FEINSTEIN, Mrs. BOXER, Mr. AKAKA, Mr. ALEXANDER, Mr. ALLARD, Mr. BARRASSO, Mr. BAUCUS, Mr. BAYH, Mr. BENNETT, Mr. BIDEN, Mr. BINGAMAN, Mr. BOND, Mr. BROWN, Mr. BROWNBACK, Mr. BUNNING, Mr. BURR, Mr. BYRD, Ms. CANTWELL, Mr. CARDIN, Mr. CARPER, Mr. CASEY, Mr. CHAMBLISS, Mrs. CLINTON, Mr. COBURN, Mr. COCHRAN, Mr. COLEMAN, Ms. COLLINS, Mr. CONRAD, Mr. CORKER, Mr. CORNYN, Mr. CRAIG, Mr. CRAPO, Mr. DEMINT, Mr. DODD, Mrs. DOLE, Mr. DOMENICI, Mr. DORGAN, Mr. DURBIN, Mr. ENSIGN, Mr. ENZI, Mr. FEINGOLD, Mr. GRAHAM, Mr. GRASSLEY, Mr. GREGG, Mr. HAGEL, Mr. HARKIN, Mr. HATCH, Mrs. HUTCHISON, Mr. INHOFE, Mr. INOUYE, Mr. ISAKSON, Mr. JOHNSON, Mr. KENNEDY, Mr. KERRY, Ms. KLOBUCHAR, Mr. KOHL, Mr. KYL, Ms. LANDRIEU, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mrs. LINCOLN, Mr. LUGAR, Mr. MARTINEZ, Mr. MCCAIN, Mrs. MCCASKILL, Mr. MENENDEZ, Ms. MIKULSKI, Ms. MURKOWSKI, Mrs. MURRAY, Mr. NELSON of Florida, Mr. NELSON of Nebraska, Mr. OBAMA, Mr. PRYOR, Mr. REED, Mr. ROBERTS, Mr. ROCKEFELLER, Mr. SALAZAR, Mr. SANDERS, Mr. SCHUMER, Mr. SESSIONS, Mr. SHELBY, Mr. SMITH, Ms. SNOWE, Mr. SPECTER, Ms. STABENOW, Mr. STEVENS, Mr. SUNUNU, Mr. TESTER, Mr. THUNE, Mr. VITTER, Mr. VOINOVICH, Mr. WARNER, Mr. WEBB, Mr. WHITEHOUSE, Mr. WICKER, and Mr. WYDEN):

S. Res. 446. A resolution relative to the death of Representative TOM LANTOS, of California; considered and agreed to.

ADDITIONAL COSPONSORS

S. 367

At the request of Mr. DORGAN, the name of the Senator from Illinois (Mr. OBAMA) was added as a cosponsor of S. 367, a bill to amend the Tariff Act of 1930 to prohibit the import, export, and sale of goods made with sweatshop labor, and for other purposes.

S. 1070

At the request of Mr. HATCH, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S. 1070, a bill to amend the Social Security Act to enhance the social security of the Nation by ensuring adequate public-private infrastructure and to resolve to prevent, detect, treat, intervene in, and prosecute elder abuse, neglect, and exploitation, and for other purposes.

S. 1430

At the request of Mr. KERRY, his name was added as a cosponsor of S. 1430, a bill to authorize State and local governments to direct divestiture from, and prevent investment in, companies with investments of $20,000,000 or more in Iran's energy sector, and for other purposes.

S. 1702

At the request of Mr. ROBERTS, the name of the Senator from North Carolina (Mr. BURR) was added as a cosponsor of S. 1702, a bill to promote employment of individuals with severe disabilities through Federal Government contracting and procurement processes, and for other purposes.

S. 1760

At the request of Mr. BROWN, the names of the Senator from Michigan (Ms. STABENOW) and the Senator from California (Mrs. BOXER) were added as cosponsors of S. 1760, a bill to amend the Public Health Service Act with respect to the Healthy Start Initiative.

S. 1794

At the request of Mr. BAYH, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 1794, a bill to amend the Federal Direct Loan Program to provide that interest shall not accrue on Federal Direct Loans for active duty service members and their spouses.

S. 1843

At the request of Mr. KENNEDY, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 1843, a bill to amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 to clarify that an unlawful practice occurs each time compensation is paid pursuant to a discriminatory compensation decision or other practice, and for other purposes.

S. 2042

At the request of Ms. STABENOW, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 2042, a bill to authorize the Secretary of Health and Human Services to conduct activities to rapidly advance treatments for spinal muscular atrophy, neuromuscular disease, and other pediatric diseases, and for other purposes.

S. 2089

At the request of Mr. NELSON of Florida, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S. 2089, a bill to amend title XVIII of the Social Security Act to reduce the coverage gap in prescription drug coverage under part D of such title based on savings to the Medicare program resulting from the negotiation of prescription drug prices.

S. 2120

At the request of Mr. MENENDEZ, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 2120, a bill to authorize the establishment of a Social Investment and Economic Development Fund for the Americas to provide assistance to reduce poverty, expand the middle class, and foster increased economic opportunity in the countries of the Western Hemisphere, and for other purposes.

S. 2183

At the request of Mr. SMITH, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 2183, a bill to amend the Public Health Service Act to provide grants for community-based mental health infrastructure improvement.

S. 2204

At the request of Mr. WHITEHOUSE, the name of the Senator from Illinois

(Mr. DURBIN) was added as a cosponsor of S. 2204, a bill to assist wildlife populations and wildlife habitats in adapting to and surviving the effects of global warming, and for other purposes.

S. 2433

At the request of Mr. MENENDEZ, his name was added as a cosponsor of S. 2433, a bill to require the President to develop and implement a comprehensive strategy to further the United States foreign policy objective of promoting the reduction of global poverty, the elimination of extreme global poverty, and the achievement of the Millennium Development Goal of reducing by one-half the proportion of people worldwide, between 1990 and 2015, who live on less than $1 per day.

S. 2439

At the request of Mr. MENENDEZ, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 2439, a bill to require the National Incident Based Reporting System, the Uniform Crime Reporting Program, and the Law Enforcement National Data Exchange Program to list cruelty to animals as a separate offense category.

S. 2485

At the request of Mr. TESTER, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 2485, a bill to amend the Public Health Service Act to provide for the participation of physical therapists in the National Health Service Corps Loan Repayment Program, and for other purposes.

S. 2550

At the request of Mrs. HUTCHISON, the names of the Senator from Georgia (Mr. ISAKSON) and the Senator from New Mexico (Mr. DOMENICI) were added as cosponsors of S. 2550, a bill to amend title 38, United States Code, to prohibit the Secretary of Veterans Affairs from collecting certain debts owed to the United States by members of the Armed Forces and veterans who die as a result of an injury incurred or aggravated on active duty in a combat zone, and for other purposes.

S. 2575

At the request of Mrs. HUTCHISON, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 2575, a bill to amend title 38, United States Code, to remove certain limitations on the transfer of entitlement to basic educational assistance under Montgomery GI Bill, and for other purposes.

S. 2605

At the request of Mr. KENNEDY, the names of the Senator from California (Mrs. FEINSTEIN), the Senator from New Jersey (Mr. MENENDEZ), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Illinois (Mr. DURBIN), the Senator from Rhode Island (Mr. REED), the Senator from Rhode Island (Mr. WHITEHOUSE) and the Senator from New York (Mr. SCHUMER) were added as cosponsors of S. 2605, a bill to require certain semiautomatic pistols manufactured, imported, or sold by Federal firearms licensees to be capable of microstamping ammunition.

S. 2618

At the request of Ms. KLOBUCHAR, the name of the Senator from Mississippi (Mr. WICKER) was added as a cosponsor of S. 2618, a bill to amend the Public Health Service Act to provide for research with respect to various forms of muscular dystrophy, including Becker, congenital, distal, Duchenne, Emery-Dreifuss Facioscapulohumeral, limb-girdle, myotonic, and oculopharyngeal muscular dystrophies.

S. RES. 439

At the request of Mr. LUGAR, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. Res. 439, a resolution expressing the strong support of the Senate for the North Atlantic Treaty Organization to enter into a Membership Action Plan with Georgia and Ukraine.

AMENDMENT NO. 3910

At the request of Mrs. FEINSTEIN, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of amendment No. 3910 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.

AMENDMENT NO. 3919

At the request of Mrs. FEINSTEIN, the name of the Senator from Rhode Island (Mr. WHITEHOUSE) was added as a cosponsor of amendment No. 3919 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.

AMENDMENT NO. 3967

At the request of Mr. COBURN, the names of the Senator from New Hampshire (Mr. SUNUNU) and the Senator from Georgia (Mr. ISAKSON) were added as cosponsors of amendment No. 3967 intended to be proposed to S. 2483, a bill to authorize certain programs and activities in the Forest Service, the Department of the Interior, and the Department of Energy, and for other purposes.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 446—RELATIVE TO THE DEATH OF REPRESENTATIVE TOM LANTOS, OF CALIFORNIA

Mr. REID (for himself, Mr. MCCONNELL, Mrs. FEINSTEIN, Mrs. BOXER, Mr. AKAKA, Mr. ALEXANDER, Mr. ALLARD, Mr. BARRASSO, Mr. BAUCUS, Mr. BAYH, Mr. BENNETT, Mr. BIDEN, Mr. BINGAMAN, Mr. BOND, Mr. BROWN, Mr. BROWNBACK, Mr. BUNNING, Mr. BURR, Mr. BYRD, Ms. CANTWELL, Mr. CARDIN, Mr. CARPER, Mr. CASEY, Mr. CHAMBLISS, Mrs. CLINTON, Mr. COBURN, Mr. COCHRAN, Mr. COLEMAN, Ms. COLLINS, Mr. CONRAD, Mr. CORKER, Mr. CORNYN, Mr. CRAIG, Mr. CRAPO, Mr. DEMINT, Mr. DODD, Mrs. DOLE, Mr. DOMENICI, Mr. DORGAN, Mr. DURBIN, Mr. ENSIGN, Mr. ENZI, Mr. FEINGOLD, Mr. GRAHAM, Mr. GRASSLEY, Mr. GREGG, Mr. HAGEL, Mr. HARKIN, Mr. HATCH, Mrs. HUTCHISON, Mr. INHOFE, Mr. INOUYE, Mr. ISAKSON, Mr. JOHNSON, Mr. KENNEDY, Mr. KERRY, Ms. KLOBUCHAR, Mr. KOHL, Mr. KYL, Ms. LANDRIEU, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mrs. LINCOLN, Mr. LUGAR, Mr. MARTINEZ, Mr. MCCAIN, Mrs. MCCASKILL, Mr. MENENDEZ, Ms. MIKULSKI, Ms. MURKOWSKI, Mrs. MURRAY, Mr. NELSON of Florida, Mr. NELSON of Nebraska, Mr. OBAMA, Mr. PRYOR, Mr. REED, Mr. ROBERTS, Mr. ROCKEFELLER, Mr. SALAZAR, Mr. SANDERS, Mr. SCHUMER, Mr. SESSIONS, Mr. SHELBY, Mr. SMITH, Ms. SNOWE, Mr. SPECTER, Ms. STABENOW, Mr. STEVENS, Mr. SUNUNU, Mr. TESTER, Mr. THUNE, Mr. VITTER, Mr. VOINOVICH, Mr. WARNER, Mr. WEBB, Mr. WHITEHOUSE, Mr. WICKER, and Mr. WYDEN) submitted the following resolution; which was considered and agreed to:

S. RES. 446

Resolved, That the Senate has heard with profound sorrow and deep regret the announcement of the death of the Honorable Tom Lantos, late a Representative from the State of California.

Resolved, That the Secretary communicate these resolutions to the House of Representatives and transmit an enrolled copy thereof to the family of the deceased.

Resolved, That when the Senate adjourns or recesses today, it stand adjourned or recessed as a further mark of respect to the memory of the deceased Representative.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4014. Mr. DODD (for himself and Mr. SHELBY) submitted an amendment intended to be proposed by him to the bill S. 2062, to amend the Native American Housing Assistance and Self-Determination Act of 1996 to reauthorize that Act, and for other purposes; which was ordered to lie on the table.

SA 4015. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill S. 1200, to amend the Indian Health Care Improvement Act to revise and extend the Act; which was ordered to lie on the table.

SA 4016. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill S. 1200, supra; which was ordered to lie on the table.

SA 4017. Mr. DURBIN (for Mrs. FEINSTEIN) submitted an amendment intended to be proposed by Mr. Durbin to the bill S. 2071, to enhance the ability to combat methamphetamine.

TEXT OF AMENDMENTS

SA 4014. Mr. DODD (for himself and Mr. SHELBY) submitted an amendment intended to be proposed by him to the bill S. 2062, to amend the Native American Housing Assistance and Self-Determination Act of 1996 to reauthorize that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 19, strike lines 1 through 13 and insert the following:

''(c) APPLICABILITY.—The provisions of paragraph (2) of subsection (a) regarding binding commitments for the remaining useful life of property shall not apply to a family or household member who subsequently takes ownership of a homeownership unit.''.

On page 22, line 9, insert ''in accordance with section 202'' after ''infrastructure''.

On page 29, strike line 18 and insert the following:

''(iv) any other legal impediment.

''(E) Subparagraphs (A) through (D) shall not apply to any claim arising from a formula current assisted stock calculation or count involving an Indian housing block grant allocation for any fiscal year through fiscal year 2008, if a civil action relating to the claim is filed by not later than 45 days after the date of enactment of this subparagraph.''.

SA 4015. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill S. 1200, to amend the Indian Health Care Improvement Act to revise and extend the Act; which was ordered to lie on the table; as follows:

On page ___, between lines ___ and ___, insert the following (at the end of title VIII of the Indian Health Care Improvement Act, as amended by section 101(a) add the following):

''SEC. 818. INDIAN HEALTH SAVINGS ACCOUNT DEMONSTRATION PROJECT.

''(a) IN GENERAL.—The Secretary shall establish a demonstration project under which eligible participants shall be provided with a subsidy for the purchase of a high deductible health plan (as defined under section 223(c)(2) of the Internal Revenue Code of 1986) and a contribution to a health savings account (as defined in section 223(d) of such Code) in order to—

''(1) improve Indian access to high quality health care services;

''(2) provide incentives to Indian patients to seek preventive medical care services;

''(3) create Indian patient awareness regarding the high cost of medical care; and

''(4) encourage appropriate use of health care services by Indians.

''(b) ELIGIBLE PARTICIPANT.—

''(1) VOLUNTARY ENROLLMENT FOR 12-MONTH PERIODS.—

''(A) IN GENERAL.—In this section, the term 'eligible participant' means an Indian who—

''(i) is an eligible individual (as defined in section 223(c)(1) of the Internal Revenue Code of 1986); and

''(ii) voluntarily agrees to enroll in the project conducted under this section (or in the case of a minor, is voluntarily enrolled on their behalf by a parent or caretaker) for a period of not less than 12 months in lieu of obtaining items or services through any Indian Health Program or any other federally-funded program during any period in which the Indian is enrolled in the project.

''(B) VOLUNTARY EXTENSIONS OF ENROLLMENT.—An eligible participant may voluntarily extend the participant's enrollment in the project for additional 12-month periods.

''(2) HARDSHIP EXCEPTION.—The Secretary shall specify criteria for permitting an eligible participant to disenroll from the project before the end of any 12-month period of enrollment to prevent undue hardship.

''(c) SUBSIDY AMOUNT.—The amount of a subsidy provided to an eligible participant for a 12-month period shall not exceed the amount equal to the average per capita expenditure for an Indian obtaining items or services from any Indian Health Program for the most recent fiscal year for which data is available with respect to the same population category as the eligible participant.

''(d) SPECIAL RULES.—

''(1) NO DEDUCTION ALLOWED FOR SUBSIDY.—For purposes of determining the amount allowable as a deduction with respect to amounts contributed to a health savings account by an eligible participant under section 223 of the Internal Revenue Code of 1986, the limitation which would (but for this paragraph) apply under section 223(b) of such Code to such participant for any taxable year shall be reduced (but not below zero) by the amount of any subsidy provided to the participant under this section for such taxable year.

''(2) TREATMENT.—The amount of a subsidy provided to an eligible participant in the project shall not be counted as income or assets for purposes of determining eligibility for benefits under any Federal public assistance program.

''(3) BUDGET NEUTRALITY.—In conducting the demonstration project under this section, the Secretary shall ensure that the aggregate payments made to carry out the project do not exceed the amount of Federal expenditures which would have been made for the provision of health care items and services to eligible participants if the project had not been implemented.

''(e) DEMONSTRATION PERIOD; REPORTS TO CONGRESS; GAO EVALUATION AND REPORT.—

''(1) DEMONSTRATION PERIOD.—

''(A) INITIAL PERIOD.—The demonstration project established under this section shall begin on January 1, 2007, and shall be conducted for a period of 5 years.

''(B) EXTENSIONS.—The Secretary may extend the project for such additional periods as the Secretary determines appropriate, unless the Secretary determines that the project is unsuccessful in achieving the purposes described in subsection (a), taking into account cost-effectiveness, quality of care, and such other criteria as the Secretary may specify.

''(2) PERIODIC REPORTS TO CONGRESS.—During the 5-year period described in paragraph (1), the Secretary shall periodically submit reports to Congress regarding the success of demonstration project conducted under this section. Each report shall include information concerning the populations participating in the project and the impact of the project on access to, and the availability of, high quality health care services for Indians.

''(3) GAO EVALUATION AND REPORT.—

''(A) EVALUATION.—The Comptroller General of the United States shall enter into a contract with an organization with expertise in health economics, health insurance markets, and actuarial science for the purpose of conducting a comprehensive study regarding the effects of high deductible health plans and health savings accounts in the Indian community. The evaluation shall include an analysis of the following issues:

''(i) Selection of, access to, and availability of, high quality health care services.

''(ii) The use of preventive health services.

''(iii) Consumer choice.

''(iv) The scope of coverage provided by high deductible health plans purchased in conjunction with health savings accounts under the project.

''(v) Such other issues as the Comptroller General determines appropriate.

''(B) REPORT.—Not later than January 1, 2013, the Comptroller General shall submit a report to Congress on the evaluation of demonstration project conducted under this section.''.

SA 4016. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill S. 1200, to amend the Indian Health Care Improvement Act to revise and extend the Act; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE III—HEALTH CARE CHOICE

SEC. 301. SHORT TITLE.

This title may be cited as ''Health Care Choice Act of 2008''.

SEC. 302. SPECIFICATION OF CONSTITUTIONAL AUTHORITY FOR ENACTMENT OF LAW.

This title is enacted pursuant to the power granted Congress under article I, section 8, clause 3, of the United States Constitution.

SEC. 303. FINDINGS.

Congress finds the following:

(1) The application of numerous and significant variations in State law impacts the ability of insurers to offer, and individuals to obtain, affordable individual health insurance coverage, thereby impeding commerce in individual health insurance coverage.

(2) Individual health insurance coverage is increasingly offered through the Internet, other electronic means, and by mail, all of which are inherently part of interstate commerce.

(3) In response to these issues, it is appropriate to encourage increased efficiency in the offering of individual health insurance coverage through a collaborative approach by the States in regulating this coverage.

(4) The establishment of risk-retention groups has provided a successful model for the sale of insurance across State lines, as the acts establishing those groups allow insurance to be sold in multiple States but regulated by a single State.

SEC. 304. COOPERATIVE GOVERNING OF INDIVIDUAL HEALTH INSURANCE COVERAGE.

(a) IN GENERAL.—Title XXVII of the Public Health Service Act (42 U.S.C. 300gg et seq.) is amended by adding at the end the following new part:

''PART D—COOPERATIVE GOVERNING OF INDIVIDUAL HEALTH INSURANCE COVERAGE

''SEC. 2795. DEFINITIONS.

''In this part:

''(1) PRIMARY STATE.—The term 'primary State' means, with respect to individual health insurance coverage offered by a health insurance issuer, the State designated by the issuer as the State whose covered laws shall govern the health insurance issuer in the sale of such coverage under this part. An issuer, with respect to a particular policy, may only designate one such State as its primary State with respect to all such coverage it offers. Such an issuer may not change the designated primary State with respect to individual health insurance coverage once the policy is issued, except that such a change may be made upon renewal of the policy. With respect to such designated State, the issuer is deemed to be doing business in that State.

''(2) SECONDARY STATE.—The term 'secondary State' means, with respect to individual health insurance coverage offered by a health insurance issuer, any State that is not the primary State. In the case of a health insurance issuer that is selling a policy in, or to a resident of, a secondary State, the issuer is deemed to be doing business in that secondary State.

''(3) HEALTH INSURANCE ISSUER.—The term 'health insurance issuer' has the meaning given such term in section 2791(b)(2), except that such an issuer must be licensed in the primary State and be qualified to sell individual health insurance coverage in that State.

''(4) INDIVIDUAL HEALTH INSURANCE COVERAGE.—The term 'individual health insurance coverage' means health insurance coverage offered in the individual market, as defined in section 2791(e)(1).

''(5) APPLICABLE STATE AUTHORITY.—The term 'applicable State authority' means, with respect to a health insurance issuer in a State, the State insurance commissioner or official or officials designated by the State to enforce the requirements of this title for the State with respect to the issuer.

''(6) HAZARDOUS FINANCIAL CONDITION.—The term 'hazardous financial condition' means that, based on its present or reasonably anticipated financial condition, a health insurance issuer is unlikely to be able—

''(A) to meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or

''(B) to pay other obligations in the normal course of business.

''(7) COVERED LAWS.—

''(A) IN GENERAL.—The term 'covered laws' means the laws, rules, regulations, agreements, and orders governing the insurance business pertaining to—

''(i) individual health insurance coverage issued by a health insurance issuer;

''(ii) the offer, sale, rating (including medical underwriting), renewal, and issuance of individual health insurance coverage to an individual;

''(iii) the provision to an individual in relation to individual health insurance coverage of health care and insurance related services;

''(iv) the provision to an individual in relation to individual health insurance coverage of management, operations, and investment activities of a health insurance issuer; and

''(v) the provision to an individual in relation to individual health insurance coverage of loss control and claims administration for a health insurance issuer with respect to liability for which the issuer provides insurance.

''(B) EXCEPTION.—Such term does not include any law, rule, regulation, agreement, or order governing the use of care or cost management techniques, including any requirement related to provider contracting, network access or adequacy, health care data collection, or quality assurance.

''(8) STATE.—The term 'State' means the 50 States and includes the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

''(9) UNFAIR CLAIMS SETTLEMENT PRACTICES.—The term 'unfair claims settlement practices' means only the following practices:

''(A) Knowingly misrepresenting to claimants and insured individuals relevant facts or policy provisions relating to coverage at issue.

''(B) Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under policies.

''(C) Failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under policies.

''(D) Failing to effectuate prompt, fair, and equitable settlement of claims submitted in which liability has become reasonably clear.

''(E) Refusing to pay claims without conducting a reasonable investigation.

''(F) Failing to affirm or deny coverage of claims within a reasonable period of time after having completed an investigation related to those claims.

''(G) A pattern or practice of compelling insured individuals or their beneficiaries to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them.

''(H) A pattern or practice of attempting to settle or settling claims for less than the amount that a reasonable person would believe the insured individual or his or her beneficiary was entitled by reference to written or printed advertising material accompanying or made part of an application.

''(I) Attempting to settle or settling claims on the basis of an application that was materially altered without notice to, or knowledge or consent of, the insured.

''(J) Failing to provide forms necessary to present claims within 15 calendar days of a requests with reasonable explanations regarding their use.

''(K) Attempting to cancel a policy in less time than that prescribed in the policy or by the law of the primary State.

''(10) FRAUD AND ABUSE.—The term 'fraud and abuse' means an act or omission committed by a person who, knowingly and with intent to defraud, commits, or conceals any material information concerning, one or more of the following:

''(A) Presenting, causing to be presented or preparing with knowledge or belief that it will be presented to or by an insurer, a reinsurer, broker or its agent, false information as part of, in support of or concerning a fact material to one or more of the following:

''(i) An application for the issuance or renewal of an insurance policy or reinsurance contract.

''(ii) The rating of an insurance policy or reinsurance contract.

''(iii) A claim for payment or benefit pursuant to an insurance policy or reinsurance contract.

''(iv) Premiums paid on an insurance policy or reinsurance contract.

''(v) Payments made in accordance with the terms of an insurance policy or reinsurance contract.

''(vi) A document filed with the commissioner or the chief insurance regulatory official of another jurisdiction.

''(vii) The financial condition of an insurer or reinsurer.

''(viii) The formation, acquisition, merger, reconsolidation, dissolution or withdrawal from one or more lines of insurance or reinsurance in all or part of a State by an insurer or reinsurer.

''(ix) The issuance of written evidence of insurance.

''(x) The reinstatement of an insurance policy.

''(B) Solicitation or acceptance of new or renewal insurance risks on behalf of an insurer reinsurer or other person engaged in the business of insurance by a person who knows or should know that the insurer or other person responsible for the risk is insolvent at the time of the transaction.

''(C) Transaction of the business of insurance in violation of laws requiring a license, certificate of authority or other legal authority for the transaction of the business of insurance.

''(D) Attempt to commit, aiding or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this paragraph.

''SEC. 2796. APPLICATION OF LAW.

''(a) IN GENERAL.—The covered laws of the primary State shall apply to individual health insurance coverage offered by a health insurance issuer in the primary State and in any secondary State, but only if the coverage and issuer comply with the conditions of this section with respect to the offering of coverage in any secondary State.

''(b) EXEMPTIONS FROM COVERED LAWS IN A SECONDARY STATE.—Except as provided in this section, a health insurance issuer with respect to its offer, sale, rating (including medical underwriting), renewal, and issuance of individual health insurance coverage in any secondary State is exempt from any covered laws of the secondary State (and any rules, regulations, agreements, or orders sought or issued by such State under or related to such covered laws) to the extent that such laws would—

''(1) make unlawful, or regulate, directly or indirectly, the operation of the health insurance issuer operating in the secondary State, except that any secondary State may require such an issuer—

''(A) to pay, on a nondiscriminatory basis, applicable premium and other taxes (including high risk pool assessments) which are levied on insurers and surplus lines insurers, brokers, or policyholders under the laws of the State;

''(B) to register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process;

''(C) to submit to an examination of its financial condition by the State insurance commissioner in any State in which the issuer is doing business to determine the issuer's financial condition, if—

''(i) the State insurance commissioner of the primary State has not done an examination within the period recommended by the National Association of Insurance Commissioners; and

''(ii) any such examination is conducted in accordance with the examiners' handbook of the National Association of Insurance Commissioners and is coordinated to avoid unjustified duplication and unjustified repetition;

''(D) to comply with a lawful order issued—

''(i) in a delinquency proceeding commenced by the State insurance commissioner if there has been a finding of financial impairment under subparagraph (C); or

''(ii) in a voluntary dissolution proceeding;

''(E) to comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance commissioner alleging that the issuer is in hazardous financial condition;

''(F) to participate, on a nondiscriminatory basis, in any insurance insolvency guaranty association or similar association to which a health insurance issuer in the State is required to belong;

''(G) to comply with any State law regarding fraud and abuse (as defined in section 2795(10)), except that if the State seeks an injunction regarding the conduct described in this subparagraph, such injunction must be obtained from a court of competent jurisdiction;

''(H) to comply with any State law regarding unfair claims settlement practices (as defined in section 2795(9)); or

''(I) to comply with the applicable requirements for independent review under section 2798 with respect to coverage offered in the State;

''(2) require any individual health insurance coverage issued by the issuer to be countersigned by an insurance agent or broker residing in that Secondary State; or

''(3) otherwise discriminate against the issuer issuing insurance in both the primary State and in any secondary State.

''(c) CLEAR AND CONSPICUOUS DISCLOSURE.—A health insurance issuer shall provide the following notice, in 12-point bold type, in any insurance coverage offered in a secondary State under this part by such a health insurance issuer and at renewal of the policy, with the 5 blank spaces therein being appropriately filled with the name of the health insurance issuer, the name of primary State, the name of the secondary State, the name of the secondary State, and the name of the secondary State, respectively, for the coverage concerned:

'This policy is issued by _____ and is governed by the laws and regulations of the State of _____, and it has met all the laws of that State as determined by that State's Department of Insurance. This policy

may be less expensive than others because it is not subject to all of the insurance laws and regulations of the State of _____, including coverage of some services or benefits mandated by the law of the State of _____. Additionally, this policy is not subject to all of the consumer protection laws or restrictions on rate changes of the State of _____. As with all insurance products, before purchasing this policy, you should carefully review the policy and determine what health care services the policy covers and what benefits it provides, including any exclusions, limitations, or conditions for such services or benefits.'.

''(d) PROHIBITION ON CERTAIN RECLASSIFICATIONS AND PREMIUM INCREASES.—

''(1) IN GENERAL.—For purposes of this section, a health insurance issuer that provides individual health insurance coverage to an individual under this part in a primary or secondary State may not upon renewal—

''(A) move or reclassify the individual insured under the health insurance coverage from the class such individual is in at the time of issue of the contract based on the health-status related factors of the individual; or

''(B) increase the premiums assessed the individual for such coverage based on a health status-related factor or change of a health status-related factor or the past or prospective claim experience of the insured individual.

''(2) CONSTRUCTION.—Nothing in paragraph (1) shall be construed to prohibit a health insurance issuer—

''(A) from terminating or discontinuing coverage or a class of coverage in accordance with subsections (b) and (c) of section 2742;

''(B) from raising premium rates for all policy holders within a class based on claims experience;

''(C) from changing premiums or offering discounted premiums to individuals who engage in wellness activities at intervals prescribed by the issuer, if such premium changes or incentives—

''(i) are disclosed to the consumer in the insurance contract;

''(ii) are based on specific wellness activities that are not applicable to all individuals; and

''(iii) are not obtainable by all individuals to whom coverage is offered;

''(D) from reinstating lapsed coverage; or

''(E) from retroactively adjusting the rates charged an insured individual if the initial rates were set based on material misrepresentation by the individual at the time of issue.

''(e) PRIOR OFFERING OF POLICY IN PRIMARY STATE.—A health insurance issuer may not offer for sale individual health insurance coverage in a secondary State unless that coverage is currently offered for sale in the primary State.

''(f) LICENSING OF AGENTS OR BROKERS FOR HEALTH INSURANCE ISSUERS.—Any State may require that a person acting, or offering to act, as an agent or broker for a health insurance issuer with respect to the offering of individual health insurance coverage obtain a license from that State, with commissions or other compensation subject to the provisions of the laws of that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

''(g) DOCUMENTS FOR SUBMISSION TO STATE INSURANCE COMMISSIONER.—Each health insurance issuer issuing individual health insurance coverage in both primary and secondary States shall submit—

''(1) to the insurance commissioner of each State in which it intends to offer such coverage, before it may offer individual health insurance coverage in such State—

''(A) a copy of the plan of operation or feasibility study or any similar statement of the policy being offered and its coverage (which shall include the name of its primary State and its principal place of business);

''(B) written notice of any change in its designation of its primary State; and

''(C) written notice from the issuer of the issuer's compliance with all the laws of the primary State; and

''(2) to the insurance commissioner of each secondary State in which it offers individual health insurance coverage, a copy of the issuer's quarterly financial statement submitted to the primary State, which statement shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by—

''(A) a member of the American Academy of Actuaries; or

''(B) a qualified loss reserve specialist.

''(h) POWER OF COURTS TO ENJOIN CONDUCT.—Nothing in this section shall be construed to affect the authority of any Federal or State court to enjoin—

''(1) the solicitation or sale of individual health insurance coverage by a health insurance issuer to any person or group who is not eligible for such insurance; or

''(2) the solicitation or sale of individual health insurance coverage that violates the requirements of the law of a secondary State which are described in subparagraphs (A) through (H) of section 2796(b)(1).

''(i) POWER OF SECONDARY STATES TO TAKE ADMINISTRATIVE ACTION.—Nothing in this section shall be construed to affect the authority of any State to enjoin conduct in violation of that State's laws described in section 2796(b)(1).

''(j) STATE POWERS TO ENFORCE STATE LAWS.—

''(1) IN GENERAL.—Subject to the provisions of subsection (b)(1)(G) (relating to injunctions) and paragraph (2), nothing in this section shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a health insurance issuer is not exempt under subsection (b).

''(2) COURTS OF COMPETENT JURISDICTION.—If a State seeks an injunction regarding the conduct described in paragraphs (1) and (2) of subsection (h), such injunction must be obtained from a Federal or State court of competent jurisdiction.

''(k) STATES' AUTHORITY TO SUE.—Nothing in this section shall affect the authority of any State to bring action in any Federal or State court.

''(l) GENERALLY APPLICABLE LAWS.—Nothing in this section shall be construed to affect the applicability of State laws generally applicable to persons or corporations.

''(m) GUARANTEED AVAILABILITY OF COVERAGE TO HIPAA ELIGIBLE INDIVIDUALS.—To the extent that a health insurance issuer is offering coverage in a primary State that does not accommodate residents of secondary States or does not provide a working mechanism for residents of a secondary State, and the issuer is offering coverage under this part in such secondary State which has not adopted a qualified high risk pool as its acceptable alternative mechanism (as defined in section 2744(c)(2)), the issuer shall, with respect to any individual health insurance coverage offered in a secondary State under this part, comply with the guaranteed availability requirements for eligible individuals in section 2741.

''SEC. 2797. PRIMARY STATE MUST MEET FEDERAL FLOOR BEFORE ISSUER MAY SELL INTO SECONDARY STATES.

''A health insurance issuer may not offer, sell, or issue individual health insurance coverage in a secondary State if the State insurance commissioner does not use a risk-based capital formula for the determination of capital and surplus requirements for all health insurance issuers.

''SEC. 2798. INDEPENDENT EXTERNAL APPEALS PROCEDURES.

''(a) RIGHT TO EXTERNAL APPEAL.—A health insurance issuer may not offer, sell, or issue individual health insurance coverage in a secondary State under the provisions of this title unless—

''(1) both the secondary State and the primary State have legislation or regulations in place establishing an independent review process for individuals who are covered by individual health insurance coverage, or

''(2) in any case in which the requirements of subparagraph (A) are not met with respect to the either of such States, the issuer provides an independent review mechanism substantially identical (as determined by the applicable State authority of such State) to that prescribed in the 'Health Carrier External Review Model Act' of the National Association of Insurance Commissioners for all individuals who purchase insurance coverage under the terms of this part, except that, under such mechanism, the review is conducted by an independent medical reviewer, or a panel of such reviewers, with respect to whom the requirements of subsection (b) are met.

''(b) QUALIFICATIONS OF INDEPENDENT MEDICAL REVIEWERS.—In the case of any independent review mechanism referred to in subsection (a)(2)—

''(1) IN GENERAL.—In referring a denial of a claim to an independent medical reviewer, or to any panel of such reviewers, to conduct independent medical review, the issuer shall ensure that—

''(A) each independent medical reviewer meets the qualifications described in paragraphs (2) and (3);

''(B) with respect to each review, each reviewer meets the requirements of paragraph (4) and the reviewer, or at least 1 reviewer on the panel, meets the requirements described in paragraph (5); and

''(C) compensation provided by the issuer to each reviewer is consistent with paragraph (6).

''(2) LICENSURE AND EXPERTISE.—Each independent medical reviewer shall be a physician (allopathic or osteopathic) or health care professional who—

''(A) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

''(B) typically treats the condition, makes the diagnosis, or provides the type of treatment under review.

''(3) INDEPENDENCE.—

''(A) IN GENERAL.—Subject to subparagraph (B), each independent medical reviewer in a case shall—

''(i) not be a related party (as defined in paragraph (7));

''(ii) not have a material familial, financial, or professional relationship with such a party; and

''(iii) not otherwise have a conflict of interest with such a party (as determined under regulations).

''(B) EXCEPTION.—Nothing in subparagraph (A) shall be construed to—

''(i) prohibit an individual, solely on the basis of affiliation with the issuer, from serving as an independent medical reviewer if—

''(I) a non-affiliated individual is not reasonably available;

''(II) the affiliated individual is not involved in the provision of items or services in the case under review;

''(III) the fact of such an affiliation is disclosed to the issuer and the enrollee (or authorized representative) and neither party objects; and

''(IV) the affiliated individual is not an employee of the issuer and does not provide services exclusively or primarily to or on behalf of the issuer;

''(ii) prohibit an individual who has staff privileges at the institution where the treatment involved takes place from serving as an independent medical reviewer merely on the basis of such affiliation if the affiliation is disclosed to the issuer and the enrollee (or authorized representative), and neither party objects; or

''(iii) prohibit receipt of compensation by an independent medical reviewer from an entity if the compensation is provided consistent with paragraph (6).

''(4) PRACTICING HEALTH CARE PROFESSIONAL IN SAME FIELD.—

''(A) IN GENERAL.—In a case involving treatment, or the provision of items or services—

''(i) by a physician, a reviewer shall be a practicing physician (allopathic or osteopathic) of the same or similar specialty, as a physician who, acting within the appropriate scope of practice within the State in which the service is provided or rendered, typically treats the condition, makes the diagnosis, or provides the type of treatment under review; or

''(ii) by a non-physician health care professional, the reviewer, or at least 1 member of the review panel, shall be a practicing non-physician health care professional of the same or similar specialty as the non-physician health care professional who, acting within the appropriate scope of practice within the State in which the service is provided or rendered, typically treats the condition, makes the diagnosis, or provides the type of treatment under review.

''(B) PRACTICING DEFINED.—For purposes of this paragraph, the term 'practicing' means, with respect to an individual who is a physician or other health care professional, that the individual provides health care services to individual patients on average at least 2 days per week.

''(5) PEDIATRIC EXPERTISE.—In the case of an external review relating to a child, a reviewer shall have expertise under paragraph (2) in pediatrics.

''(6) LIMITATIONS ON REVIEWER COMPENSATION.—Compensation provided by the issuer to an independent medical reviewer in connection with a review under this section shall—

''(A) not exceed a reasonable level; and

''(B) not be contingent on the decision rendered by the reviewer.

''(7) RELATED PARTY DEFINED.—For purposes of this section, the term 'related party' means, with respect to a denial of a claim under a coverage relating to an enrollee, any of the following:

''(A) The issuer involved, or any fiduciary, officer, director, or employee of the issuer.

''(B) The enrollee (or authorized representative).

''(C) The health care professional that provides the items or services involved in the denial.

''(D) The institution at which the items or services (or treatment) involved in the denial are provided.

''(E) The manufacturer of any drug or other item that is included in the items or services involved in the denial.

''(F) Any other party determined under any regulations to have a substantial interest in the denial involved.

''(8) DEFINITIONS.—For purposes of this subsection:

''(A) ENROLLEE.—The term 'enrollee' means, with respect to health insurance coverage offered by a health insurance issuer, an individual enrolled with the issuer to receive such coverage.

''(B) HEALTH CARE PROFESSIONAL.—The term 'health care professional' means an individual who is licensed, accredited, or certified under State law to provide specified health care services and who is operating within the scope of such licensure, accreditation, or certification.

''SEC. 2799. ENFORCEMENT.

''(a) IN GENERAL.—Subject to subsection (b), with respect to specific individual health insurance coverage the primary State for such coverage has sole jurisdiction to enforce the primary State's covered laws in the primary State and any secondary State.

''(b) SECONDARY STATE'S AUTHORITY.—Nothing in subsection (a) shall be construed to affect the authority of a secondary State to enforce its laws as set forth in the exception specified in section 2796(b)(1).

''(c) COURT INTERPRETATION.—In reviewing action initiated by the applicable secondary State authority, the court of competent jurisdiction shall apply the covered laws of the primary State.

''(d) NOTICE OF COMPLIANCE FAILURE.—In the case of individual health insurance coverage offered in a secondary State that fails to comply with the covered laws of the primary State, the applicable State authority of the secondary State may notify the applicable State authority of the primary State.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to individual health insurance coverage offered, issued, or sold after the date that is one year after the date of the enactment of this Act.

(c) GAO ONGOING STUDY AND REPORTS.—

(1) STUDY.—The Comptroller General of the United States shall conduct an ongoing study concerning the effect of the amendment made by subsection (a) on—

(A) the number of uninsured and under-insured;

(B) the availability and cost of health insurance policies for individuals with pre-existing medical conditions;

(C) the availability and cost of health insurance policies generally;

(D) the elimination or reduction of different types of benefits under health insurance policies offered in different States; and

(E) cases of fraud or abuse relating to health insurance coverage offered under such amendment and the resolution of such cases.

(2) ANNUAL REPORTS.—The Comptroller General shall submit to Congress an annual report, after the end of each of the 5 years following the effective date of the amendment made by subsection (a), on the ongoing study conducted under paragraph (1).

SEC. 305. SEVERABILITY.

If any provision of this title or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this title and the application of the provisions of such to any other person or circumstance shall not be affected.

SA 4017. Mr. DURBIN (for Mrs. FEINSTEIN) submitted an amendment intended to be proposed by Mr. DURBIN to the bill S. 2071, to enhance the ability to combat methamphetamine; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Combat Methamphetamine Enhancement Act of 2007''.

SEC. 2. REQUIREMENT OF SELF-CERTIFICATION BY ALL REGULATED PERSONS SELLING SCHEDULED LISTED CHEMICALS.

Section 310(e)(2) of the Controlled Substances Act (21 U.S.C. 830(e)(2)) is amended by inserting at the end the following:

''(C) Each regulated person who makes a sale at retail of a scheduled listed chemical product and is required under subsection (b)(3) to submit a report of the sales transaction to the Attorney General may not sell any scheduled listed chemical product at retail unless such regulated person has submitted to the Attorney General a self-certification including a statement that the seller understands each of the requirements that apply under this paragraph and under subsection (d) and agrees to comply with the requirements. The Attorney General shall by regulation establish criteria for certifications of mail-order distributors that are consistent with the criteria established for the certifications of regulated sellers under paragraph (1)(B).''.

SEC. 3. PUBLICATION OF SELF-CERTIFIED REGULATED SELLERS AND REGULATED PERSONS LISTS.

Section 310(e)(1)(B) of the Controlled Substances Act (21 U.S.C. 830(e)(1)(B)) is amended by inserting at the end the following:

''(v) PUBLICATION OF LIST OF SELF-CERTIFIED PERSONS.—The Attorney General shall develop and make available a list of all persons who are currently self-certified in accordance with this section. This list shall be made publicly available on the website of the Drug Enforcement Administration in an electronically downloadable format.''.

SEC. 4. REQUIREMENT THAT DISTRIBUTORS OF LISTED CHEMICALS SELL ONLY TO SELF-CERTIFIED REGULATED SELLERS AND REGULATED PERSONS.

Section 402(a) of the Controlled Substances Act (21 U.S.C. 842(a)) is amended—

(1) in paragraph (13), by striking ''or'' after the semicolon;

(2) in paragraph (14), by striking the period and inserting ''; or'';

(3) by inserting after paragraph (14) the following:

''(15) to distribute a scheduled listed chemical product to a regulated seller, or to a regulated person referred to in section 310(b)(3)(B), unless such regulated seller or regulated person is, at the time of such distribution, currently registered with the Drug Enforcement Administration, or on the list of persons referred to under section 310(e)(1)(B)(v).''; and

(4) inserting at the end the following: ''For purposes of paragraph (15), if the distributor is temporarily unable to access the list of persons referred to under section 310(e)(1)(B)(v), the distributor may rely on a written, faxed, or electronic copy of a certificate of self-certification submitted by the regulated seller or regulated person, provided the distributor confirms within 7 business days of the distribution that such regulated seller or regulated person is on the list referred to under section 310(e)(1)(B)(v).''.

SEC. 5. NEGLIGENT FAILURE TO SELF-CERTIFY AS REQUIRED.

Section 402(a) of the Controlled Substances Act (21 U.S.C. 842(a)(10)) is amended by inserting before the semicolon the following: ''or negligently to fail to self-certify as required under section 310 (21 U.S.C. 830)''.

SEC. 6. EFFECTIVE DATE AND REGULATIONS.

(a) EFFECTIVE DATE.—This Act and the amendments made by this Act shall take effect 180 days after the date of enactment of this Act.

(b) REGULATIONS.—In promulgating the regulations authorized by section 2, the Attorney General may issue regulations on an interim basis as necessary to ensure the implementation of this Act by the effective date.

FOREIGN TRAVEL FINANCIAL REPORTS

In accordance with the appropriate provisions of law, the Secretary of the Senate herewith submits the following reports for standing committees of the Senate, certain joint committees of the Congress, delegations and groups, and select and special committees of the Senate, relating to expenses incurred in the performance of authorized foreign travel:

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2007

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Paul Grove:									
Chad	Franc		411.00						411.00
Ethiopia	Dollar		1,200.00						1,200.00
Germany	Dollar		202.00						202.00
United States	Dollar				12,828.29				12,828.29
Michele Wymer:									
Chad	Franc		411.00						411.00
Ethiopia	Dollar		1,200.00						1,200.00
Germany	Dollar		202.00						202.00
United States	Dollar				16,495.23				16,495.23
Nikole M. Manatt:									
Chad	Franc		411.00						411.00
Ethiopia	Dollar		1,200.00						1,200.00
Germany	Dollar		202.00						202.00
United States	Dollar				15,873.37				15,873.37
Katherine A. Eltrich:									
Ethiopia	Dollar		1,200.00						1,200.00
Germany	Dollar		202.00						202.00
United States	Dollar				10,658.29				10,658.29
Senator Daniel Inouye:									
Japan	Yen		2,400.00						2,400.00
United States	Dollar				9,426.48				9,426.48
Delegation Expenses: [1]									
Japan	Dollar						2,988.79		2,988.79
Senator Ted Stevens:									
Tunisia	Dinar		466.66						466.66
Jordan	Dinar		206.78						206.78
Italy	Euro		1,877.64						1,877.64
England	Pound		1,679.14						1,679.14
Senator Daniel Inouye:									
Tunisia	Dinar		541.66						541.66
Jordan	Dinar		281.78						281.78
Italy	Euro		1,952.64						1,952.64
England	Pound		1,754.14						1,754.14
Charles Houy:									
Tunisia	Dinar		541.66						541.66
United States	Dollar				3,560.00				3,560.00
Sid Ashworth:									
Tunisia	Dinar		541.66						541.66
Jordan	Dinar		281.78						281.78
Italy	Euro		1,952.64						1,952.64
England	Pound		1,754.14						1,754.14
Barry G. Wright:									
Bahrain	Dinar		328.00						328.00
France	Euro		531.00						531.00
Djibouti	Franc		336.00						336.00
United States	Dollar				17,230.01				17,230.01
Senator Tom Harkin:									
Haiti	Gourde		287.00						287.00
Rosemary Gutierrez:									
Haiti	Gourde		287.00						287.00
Nicole Di Resta:									
Germany	Dollar		632.00						632.00
United States	Dollar				9,993.35				9,993.35
Douglas Clapp:									
Spain	Euro		1,266.00						1,266.00
United States	Dollar				5,232.00				5,232.00
Bruce Evans:									
Spain	Euro		1,266.00						1,266.00
United States	Dollar				5,771.00				5,771.00
Scott O'Malia:									
Spain	Euro		1,266.00						1,266.00
United States	Dollar				5,771.00				5,771.00
Joseph B. Fuller:									
Spain	Euro		1,119.00						1,119.00
United States	Dollar				5,232.00				5,232.00
Senator Robert F. Bennett:									
Czech Republic	Koruna		124.00						124.00
India	Rupee		2,094.00						2,094.00
Afghanistan	Afghani		57.00						57.00
Pakistan	Rupee		316.00						316.00
Hungary	Forint		123.00						123.00
Mary Jane Collipriest:									
Czech Republic	Koruna		125.00						125.00
India	Rupee		2,095.00						2,095.00
Afghanistan	Afghani		65.00						65.00
Pakistan	Rupee		330.00						330.00
Hungary	Forint		121.00						121.00
Mark Morrison:									
Czech Republic	Koruna		122.00						122.00
India	Rupee		2,084.00						2,084.00
Afghanistan	Afghani		60.00						60.00
Pakistan	Rupee		326.00						326.00
Hungary	Forint		117.00						117.00
Total			38,550.32		118,071.02		2,988.79		159,610.13

[1] Delegation expenses include payments and reimbursements by the Department of State under the authority of Section 502(b) of the Mutual Security Act of 1954, as amended by Section 22 of Pub. L. 95–384 and expenses paid pursuant to S. Res. 179, agreed to May 25, 1977.

ROBERT BYRD,
Chairman, Committee on Appropriations, Jan. 31, 2008.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, AMENDED, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2007

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Tim Rieser:									
Nepal	Dollar		258.00						258.00
United States	Dollar				4,535.00				4,535.00
Total			258.00		4,535.00				4,793.00

ROBERT BYRD,
Chairman, Committee on Appropriations, Jan. 31, 2008.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ARMED SERVICES FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2007

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Jim Webb:									
United States	Dollar				8,036.15				8,036.15
Kuwait	Dollar		92.39						92.39
Gordon Peterson:									
United States	Dollar				8,036.15				8,036.15
Kuwait	Dollar		99.61						99.61–
Jennifer Park Stout:									
United States	Dollar				8,036.15				8,036.15
Kuwait	Dollar		99.61						99.61
Senator Bill Nelson:									
Brazil	Real		374.00		797.00				1,171.00
Bryan Gulley:									
Brazil	Real		634.20		5,704.10				6,338.30
Lynn Bannister:									
Brazil	Real		654.00		797.00				1,451.00
Madelyn R. Creedon:									
United States	Dollar				7,811.46				7,811.46
France	Euro		1,963.00		233.00				2,196.00
Richard W. Fieldhouse:									
United States	Dollar				9,828.37				9,828.37
Germany	Euro		301.78						301.78
Belgium	Euro		325.45		111.26				436.71
France	Euro		806.21		14.80				821.01
William G.P. Monahan:									
United States	Dollar				9,578.87				9,578.87
Germany	Euro		294.63		51.78				346.41
Belgium	Euro		304.31		268.82				573.13
France	Euro		776.63		14.79				791.42
Robert M. Soofer:									
United States	Dollar				7,811.46				7,811.46
France	Euro		2,822.93		75.00				2,897.93
Belgium	Euro				229.00				229.00
Michael J. McCord:									
United States	Dollar				19,257.00				19,257.00
Bahrain	Dollar		458.00				6.00		464.00
France	Dollar		697.00				9.00		706.00
Djibouti	Dollar		158.00						19,257.00
Michael J. Kuiken:									
United States	Dollar				19,257.00				19,257.00
Bahrain	Dollar		471.00						471.00
France	Dollar		694.00						694.00
Djibouti	Dollar		228.00						228.00
William K. Sutey:									
United States	Dollar				9,976.45				9,976.45
Bahrain	Dollar		500.36						500.36
Derek J. Maurer:									
United States	Dollar				19,257.00				19,257.00
Bahrain	Dollar		478.00						478.00
Djibouti	Dollar		240.00						240.00
France	Dollar		703.00						703.00
Senator James M. Inhofe:									
Ghana	Cedi		47.14				50.00		97.14
Burundi	Franc		65.31						65.31
Ethiopia	Birr		49.61						49.61
United Arab Emirates	Dirham		72.68				6.81		79.49
Czech Republic	Koruna		32.28						32.28
Mark Powers:									
Ghana	Cedi		47.14				9.37		56.51
Burundi	Franc		65.31						65.31
Ethiopia	Birr		49.61						49.61
United Arab Emirates	Dirham		155.28				27.72		183.00
Czech Republic	Koruna		36.71						36.71
Anthony Lazarski:									
Ghana	Cedi		47.14						47.l4
Burundi	Franc		65.31						65.31
Ethiopia	Birr		49.61						49.61
United Arab Emirates	Dirham		113.55						113.55
Czech Republic	Koruna		51.26						51.26
Nathan Reese:									
Ghana	Cedi		47.14						47.14
Burundi	Franc		65.31						65.31
Ethiopia	Birr		49.61						49.61
United Arab Emirates	Dirham		72.68						72.68
Czech Republic	Koruna		56.75						56.75
Ryan Thompson:									
Ghana	Cedi		47.14						47.14
Burundi	Franc		65.31						65.31
Ethiopia	Birr		49.61						49.61
United Arab Emirates	Dirham		113.55						113.55
Czech Republic	Konuna		54.00				4.00		58.00
Total			15,745.15		135,182.61		112.90		151,040.66

CARL LEVIN,
Chairman, Committee on Armed Services, Jan. 4, 2008.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2007

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Margaret Cummisky:									
United States	Dollar				9,000.11				9,000.11
Hong Kong	Dollar		267.00						267.00
Indonesia	Rupiah		396.00						396.00
Floyd DesChamps:									
United States	Dollar				11,731.70				11,731.70
Singapore	Dollar		176.00						176.00
Indonesia	Rupiah		1,281.00						1,281.00
Virginia Worrest:									
United States	Dollar				11,189.16				11,189.16
Indonesia	Rupiah		660.00						660.00
Japan	Dollar		250.00						250.00
Ann Zulkosky:									
United States	Dollar				9,020.11				9,020.11
Hong Kong	Dollar		264.00						264.00
Indonesia	Rupiah		396.00						396.00
Total			3,440.00		40,941.08		250.00		44,631.08

DANIEL INOUYE,
Chairman, Committee on Commerce, Science, and Transportation,
Jan. 31, 2008.

CONSOLIDATED REPORT OF EXPENDITURES OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENERGY & NATURAL RESOURCES FOR TRAVEL FROM OCTOBER 1 TO DECEMBER 31, 2007

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Jeff Bingaman:									
Haiti	Dollar		167.70						167.70
Senator Bob Corker:									
Haiti	Dollar		137.70						137.70
Chris Stone:									
Haiti	Dollar		137.70						137.70
Scott Miller:									
Haiti	Dollar		137.70						137.70
Anne Oswalt:									
Haiti	Dollar		137.70						137.70
Jonathan Black:									
United States	Dollar				9,464.70				9,464.70
Singapore	Dollar		176.00						176.00
Indonesia	Rupiah		876.00						876.00
Total			1,770.50		9,464.70				11,235.20

JEFF BINGAMAN,
Chairman, Committee on Energy & Natural Resources,
Jan. 22, 2008.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2007

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Eric Thu:									
United States	Dollar				9,464.70				9,464.70
Indonesia	Rupiah		1,092.00						1,092.00
Chelsea Maxwell:									
United States	Dollar				9,155.70				9,155.70
Indonesia	Rupiah		912.00						912.00
Jo-Ellen Darcy:									
United States	Dollar				7,285.70				7,285.70
Indonesia	Rupiah		1,092.00						1,092.00
Allyne Todd Johnston:									
United States	Dollar				8,802.18				8,802.18
Indonesia	Rupiah		792.00						792.00
Arvin Ganesan:									
United States	Dollar				9,464.70				9,464.70
Indonesia	Rupiah		1,092.00						1,092.00
Jessica Maher:									
United States	Dollar				9,464.70				9,464.70
Indonesia	Rupiah		1,092.00						1,092.00
John Shanahan:									
United States	Dollar				13,232.11				13,232.11
Indonesia	Rupiah		1,092.00						1,092.00
Peter Rafle:									
United States	Dollar				6,758.70				6,758.70
Indonesia	Rupiah		1,456.00						1,456.00
Marc Morano:									
United States	Dollar				13,232.11				13,232.11
Indonesia	Rupiah		1,092.00						1,092.00
Thomas Lawler:									
United States	Dollar				9,458.70				9,458.70
Indonesia	Rupiah		1,092.00						1,092.00
Darren Parker:									
United States	Dollar				7,785.70				7,785.70
Indonesia	Rupiah		1,092.00						1,092.00
David McIntosh:									
United States	Dollar				9,088.70				9,088.70
Indonesia	Rupiah		992.00						992.00
John Stoody:									
United States	Dollar				7,196.20				7,196.20

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2007—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Indonesia	Rupiah		910.00						910.00
Suzanne Matwyshen Gillen:									
United States	Dollar				8,891.57				8,891.57
Hong Kong	Dollar		988.00						988.00
Indonesia	Rupiah		910.00						910.00
Daniel Whiting:									
United States	Dollar				9,470.11				9,470.11
Hong Kong	Dollar		294.00						294.00
Indonesia	Rupiah		546.00						546.00
Total			16,536.00		138,751.58				155,287.58

BARBARA BOXER,
Chairman, Committee on Environment and Public Works, Jan. 18, 2008.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2007

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Norm Coleman:									
Guatemala	Quetzal		212.53						212.53
United States	Dollar				1,114.78				1,114.78
Senator Bob Corker:									
Czech Republic	Koruna		153.00						153.00
India	Rupee		2,144.00						2,144.00
Afghanistan	Rupee		75.00						75.00
Pakistan	Rupee		339.00						339.00
Hungary	Florint		131.00						131.00
Martin Bayr:									
Belgium	Euro		747.68						747.68
Germany	Euro		317.85						317.85
Turkey	Lira		1,058.18						1,058.18
United States	Dollar				9,120.51				9,120.51
Bradley Bowman:									
United Arab Emirates	Dirham		2,340.00						2,340.00
Oman	Rial		400.00						400.00
Bahrain	Dinar		250.00						250.00
Kuwait	Dinar		310.00						310.00
Saudi Arabia	Riyal		1,300.00						1,300.00
United States	Dollar				9,667.63				9,667.63
Bradley Bowman:									
Egypt	Pound		349.00						349.00
Turkey	Lira		970.00						970.00
United States	Dollar				7,865.73				7,865.73
Jason Bruder:									
Georgia	Lari		966.00		150.00				1,116.00
Perry Cammack:									
United States	Dollar				7,845.06				7,845.06
Mark Clack:									
Cote d'Ivoire	Franc		1,100.00						1,100.00
Mozambique	Metical		1,000.00						1,000.00
United States	Dollar				13,831.00				13,831.00
Isaac Edwards:									
Canada	Dollar		345.00						345.00
United States	Dollar				1,536.35				1,536.35
Paul Foldi:									
Mali	Franc		919.50						919.50
United States	Dollar				12,652.36				12,652.36
Paul Foldi:									
Haiti	Gourde		964.00						964.00
United States	Dollar				691.20				691.20
James Greene:									
Canada	Dollar		165.00						165.00
United States	Dollar				1,617.68				1,617.68
Catherine Henson:									
Belgium	Euro		710.00						710.00
Germany	Euro		334.00						334.00
Turkey	Lira		1,071.00						1,071.00
United States	Dollar				9,120.51				9,120.51
Frank Jannuzi:									
Korea	Won		1,624.00						1,624.00
United States	Dollar				7,678.76				7,678.76
Frank Jannuzi:									
China	Yuan		2,469.00						2,469.00
Taiwan	Dollar		1,014.00						1,014.00
United States	Dollar				13,357.10				13,357.10
Thomas Moore:									
Austria	Euro		448.00						448.00
Holland	Euro		895.11						895.11
United States	Dollar				7,503.73				7,503.73
Keith Luse:									
China	Yuan		956.66						956.66
Dem. People Rep. Korea	Won		846.50		380.00				1,226.50
Korea	Won		893.43						893.43
United States	Dollar				1,733.17				1,733.17
Sarah Margon:									
Ethiopia	Birr		972.00						972.00
Kenya	Schilling		803.00						803.00
United States	Dollar				9,483.07				9,483.07
David McKean:									
South Africa	Rand		525.00		115.00		80.00		720.00
United States	Dollar				5,362.57				5,362.57
Kenneth Myers, III:									
Dem. Peoples Rep. Korea	Won		1,384.00						1,384.00
China	Yuan		876.00						876.00
United States	Dollar				9,704.65				9,704.65
Ana Navarro:									
Guatemala	Quetzal		277.00						277.00

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2007—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
United States	Dollar				1,182.00				1,182.00
Stacie Oliver:									
Czech Republic	Koruna		153.00						153.00
India	Rupee		2,144.00						2,144.00
Afghanistan	Rupee		75.00						75.00
Pakistan	Rupee		339.00						339.00
Hungary	FLorint		131.00						131.00
Paul Rosen:									
Panama	Dollar		448.00						448.00
Colombia	Peso		1,100.00						1,100.00
United States	Dollar				1,178.70				1,178.70
Jennifer Simon:									
India	Dollar		2,480.00						2,480.00
United States	Dollar				9,324.00				9,324.00
Jennifer Simon:									
Vietnam	Dong		1,520.00		96.00				1,616.00
United States	Dollar				9,248.70				9,248.70
Shannon Smith:									
Vietnam	Dong		1,675.00		96.00				1,771.00
United States	Dollar				10,022.00				10,022.00
Shannon Smith:									
Haiti	Dollar		1,012.00						1,012.00
United States	Dollar				691.00				691.00
Chris Socha:									
Belgium	Euro		787.00						787.00
Germany	Euro		310.00						310.00
Turkey	Lira		1,048.00						1,048.00
United States	Dollar				9,120.51				9,120.51
Paul Talwar:									
Israel	Dollar		1,250.00						1,250.00
United States	Dollar				6,661.34				6,661.34
Louis Terrell:									
India	Dollar		2,480.00						2,480.00
United States	Dollar				8,962.00				8,962.00
Anthony Wier:									
Austria	Euro		158.68		32.88				191.56
Holland	Euro		725.58				27.22		752.80
United States	Dollar				7,503.73				7,503.73
Heather Zichal:									
South Africa	Rand		525.00		115.00		80.00		720.00
United States	Dollar				5,360.05				5,360.05
Jonah Blank:									
Thailand	Dollar		948.00		657.00				1,605.00
Vietnam	Dollar		503.00		142.00				645.00
United States	Dollar				7,263.16				7,263.16
Total			52,467.70		208,186.93		187.22		260,841.85

JOSEPH R. BIDEN, Jr.,
Chairman, Committee on Foreign Relations, Jan. 28, 2008.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2007

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Jon Tester:									
United States	Dollar				8,036.15				8,036.15
Kuwait	Dollar		310.00						310.00
James Wise:									
United States	Dollar				8,036.15				8,036.15
Kuwait	Dollar		310.00						310.00
Total			620.00		16,072.30				16,692.30

JOE LIEBERMAN,
Chairman, Committee on Homeland Security and Governmental Affairs,
Jan. 16, 2008.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2007

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Lauren F. Fuller:									
United States	Dollar				691.20				691.20
Haiti	Gourde		977.00						977.00
David Bowen:									
United States	Dollar				691.20				691.20
Haiti	Gourde		900.00						900.00
Total			1,877.00		1,382.40				3,259.40

EDWARD M. KENNEDY,
Chairman, Committee on Health, Education, Labor, and Pensions,
Jan. 29, 2008.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2007

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator John Kerry:									
United States	Dollar				12,287.24				12,287.24
Indonesia	Rupiah		830.00						830.00
Kathleen Frangione:									
United States	Dollar				6,731.11				6,731.11
Hong Kong	Dollar		346.74						346.74
Indonesia	Rupiah		2,246.35						2,246.35
David Wade:									
United States	Dollar				4,909.20				4,909.20
Indonesia	Rupiah		806.00						806.00
Delegation Expenses:									
Indonesia	Rupiah						3,817.98		3,817.98
Total			4,229.09		23,927.55		3,817.98		31,974.62

JOHN F. KERRY,
Chairman, Committee on Small Business and Entrepreneurship,
Jan. 25, 2008.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON INTELLIGENCE FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2007

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Andrew Kerr			1,898.00						1,898.00
	Dollar				7,594.75				7,594.75
Sameer Bhalotra			1,608.00						1,608.00
	Dollar				5,141.20				5,141.20
Senator Bill Nelson			1,985.00						1,985.00
	Dollar				8,121.42				8,121.42
Caroline Tess			1,385.00						1,385.00
	Dollar				8,121.42				8,121.42
Peter Mitchell			1,385.00						1,385.00
	Dollar				8,121.42				8,121.42
Louis Tucker			1,066.00						1,066.00
	Dollar				5,326.40				5,326.40
George K. Johnson			1,066.00						1,066.00
	Dollar				5,296.70				5,296.70
Senator Christopher S. Bond			2,305.00						2,305.00
	Dollar				8,014.42				8,014.42
Daniel Jones			788.00						788.00
	Dollar				2,416.25				2,416.25
Daniel Jones			2,784.00						2,784.00
	Dollar				8,900.00				8,900.00
Lorenzo Goco			1,796.70						1,796.70
	Dollar				10,394.22				10,394.22
Andrew Kerr			2,791.00						2,791.00
	Dollar				8,804.89				8,804.89
Sameer Bhalotra			2,793.00						2,793.00
	Dollar				8,900.00				8,900.00
Michael Pevzner			3,321.00						3,321.00
	Dollar				8,900				8,900.00
Total			26,971.70		104,053.09				131,024.79

JAY ROCKEFELLER,
Chairman, Committee on Intelligence, Jan. 22, 2008.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), CODEL REID FOR TRAVEL FROM NOV. 25 TO DEC. 2, 2007

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Harry Reid:									
Paraguay	Guarani		452.00						452.00
Brazil	Real		288.00						288.00
Mexico	Peso		627.00						627.00
Guatemala	Quetzal		554.00						554.00
Senator Thad Cochran:									
Paraguay	Guarani		452.00						452.00
Brazil	Real		288.00						288.00
Mexico	Peso		700.00						700.00
Guatemala	Quetzal		554.00						554.00
Senator Jeff Bingaman:									
Paraguay	Guarani		452.00						452.00
Brazil	Real		288.00						288.00
Mexico	Peso		450.00						450.00
United States	Dollar				256.39				256.39
Senator Kent Conrad:									
Paraguay	Guarani		452.00						452.00
Brazil	Real		288.00						288.00
Mexico	Peso		700.00						700.00
Guatemala	Quetzal		554.00						554.00
Senator Byron Dorgan:									
Paraguay	Guarani		452.00						452.00
Brazil	Real		288.00						288.00
Mexico	Peso		700.00						700.00
Guatemala	Quetzal		554.00						554.00
Senator Mike Crapo:									
Paraguay	Guarani		452.00						452.00
Brazil	Real		288.00						288.00
Mexico	Peso		700.00						700.00

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), CODEL REID FOR TRAVEL FROM NOV. 25 TO DEC. 2, 2007—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Guatemala	Quetzal		554.00						554.00
Senator Robert Menendez:									
Paraguay	Guarani		452.00						452.00
Brazil	Real		288.00						288.00
Mexico	Peso		508.00						508.00
Guatemala	Quetzal		554.00						554.00
Dr. John Eisold:									
Paraguay	Guarani		452.00						452.00
Brazil	Real		288.00						288.00
Mexico	Peso		700.00						700.00
Guatemala	Quetzal		554.00						554.00
Serena Hoy:									
Paraguay	Guarani		352.00						352.00
Brazil	Real		288.00						288.00
Mexico	Peso		500.00						500.00
Guatemala	Quetzal		284.00						284.00
Mike Castellano:									
Paraguay	Guarani		452.00						452.00
Brazil	Real		288.00						288.00
Mexico	Peso		387.00						387.00
Guatemala	Quetzal		554.00						554.00
Kay Webber:									
Paraguay	Guarani		452.00						452.00
Brazil	Real		288.00						288.00
Mexico	Peso		700.00						700.00
Guatemala	Quetzal		554.00						554.00
Federico de Jesus:									
Paraguay	Guarani		452.00						452.00
Brazil	Real		288.00						288.00
Mexico	Peso		443.65						443.65
Guatemala	Quetzal		554.00						554.00
Marcel Lettre:									
Paraguay	Guarani		402.00						402.00
Brazil	Real		288.00						288.00
Mexico	Peso		550.00						550.00
Guatemala	Quetzal		454.00						454.00
Anna Gallagher:									
Paraguay	Guarani		452.00						452.00
Brazil	Real		288.00						288.00
Mexico	Peso		700.00						700.00
Guatemala	Quetzal		554.00						554.00
Delegation Expenses: [1]									
Paraguay	Guarani						7,497.43		6,497.43
Brazil	Real						29,054.83		29,054.83
Colombia	Peso						3,365.43		3,365.43
Mexico	Peso						8,128.43		8,128.43
Guatemala	Quetzal						11,664.43		11,664.43
Total			25,407.65		256.39		59,710.55		85,374.59

[1] Delegation expenses include payments and reimbursements to the Department of State, and the Department of Defense under the authority of Sec. 502(b) of the Mutual Security Act of 1954, as amended by Sec. 22 of P.L. 95–384, and S. Res. 179 agreed to May 25, 1977.

HARRY REID,
Majority Leader, Feb. 6, 2008.

COMBAT METHAMPHETAMINE ENHANCEMENT ACT OF 2007

Mr. DURBIN. Mr. President, I ask unanimous consent the Judiciary Committee be discharged from further consideration of S. 2071, and the Senate proceed to its immediate consideration.

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

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2071) to enhance the ability to combat methamphetamine.

There being no objection, the Senate proceeded to consider the bill.

Mr. DURBIN. I ask unanimous consent that the Feinstein substitute amendment which is at the desk be agreed to; the bill as amended be read a third time and passed; the motions to reconsider be laid upon the table with no intervening action or debate; and that any statements be printed in the RECORD.

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

The amendment (No. 4017) was agreed to, as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Combat Methamphetamine Enhancement Act of 2007''.

SEC. 2. REQUIREMENT OF SELF-CERTIFICATION BY ALL REGULATED PERSONS SELLING SCHEDULED LISTED CHEMICALS.

Section 310(e)(2) of the Controlled Substances Act (21 U.S.C. 830(e)(2)) is amended by inserting at the end the following:

''(C) Each regulated person who makes a sale at retail of a scheduled listed chemical product and is required under subsection (b)(3) to submit a report of the sales transaction to the Attorney General may not sell any scheduled listed chemical product at retail unless such regulated person has submitted to the Attorney General a self-certification including a statement that the seller understands each of the requirements that apply under this paragraph and under subsection (d) and agrees to comply with the requirements. The Attorney General shall by regulation establish criteria for certifications of mail-order distributors that are consistent with the criteria established for the certifications of regulated sellers under paragraph (1)(B).''.

SEC. 3. PUBLICATION OF SELF-CERTIFIED REGULATED SELLERS AND REGULATED PERSONS LISTS.

Section 310(e)(1)(B) of the Controlled Substances Act (21 U.S.C. 830(e)(1)(B)) is amended by inserting at the end the following:

''(v) PUBLICATION OF LIST OF SELF-CERTIFIED PERSONS.—The Attorney General shall develop and make available a list of all persons who are currently self-certified in accordance with this section. This list shall be made publicly available on the website of the Drug Enforcement Administration in an electronically downloadable format.''.

SEC. 4. REQUIREMENT THAT DISTRIBUTORS OF LISTED CHEMICALS SELL ONLY TO SELF-CERTIFIED REGULATED SELLERS AND REGULATED PERSONS.

Section 402(a) of the Controlled Substances Act (21 U.S.C. 842(a)) is amended—

(1) in paragraph (13), by striking ''or'' after the semicolon;

(2) in paragraph (14), by striking the period and inserting ''; or'';

(3) by inserting after paragraph (14) the following:

''(15) to distribute a scheduled listed chemical product to a regulated seller, or to a regulated person referred to in section 310(b)(3)(B), unless such regulated seller or regulated person is, at the time of such distribution, currently registered with the Drug Enforcement Administration, or on the list of persons referred to under section 310(e)(1)(B)(v).''; and

(4) inserting at the end the following: ''For purposes of paragraph (15), if the distributor is temporarily unable to access the list of persons referred to under section 310(e)(1)(B)(v), the distributor may rely on a written, faxed, or electronic copy of a certificate of self-certification submitted by the

regulated seller or regulated person, provided the distributor confirms within 7 business days of the distribution that such regulated seller or regulated person is on the list referred to under section 310(e)(1)(B)(v).''.

SEC. 5. NEGLIGENT FAILURE TO SELF-CERTIFY AS REQUIRED.

Section 402(a) of the Controlled Substances Act (21 U.S.C. 842(a)(10)) is amended by inserting before the semicolon the following: ''or negligently to fail to self-certify as required under section 310 (21 U.S.C. 830)''.

SEC. 6. EFFECTIVE DATE AND REGULATIONS.

(a) EFFECTIVE DATE.—This Act and the amendments made by this Act shall take effect 180 days after the date of enactment of this Act.

(b) REGULATIONS.—In promulgating the regulations authorized by section 2, the Attorney General may issue regulations on an interim basis as necessary to ensure the implementation of this Act by the effective date.

The bill (S. 2071), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed.

RELATIVE TO THE DEATH OF REPRESENTATIVE TOM LANTOS

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate now proceed to the immediate consideration of S. Res. 446 submitted earlier today by Senators REID and MCCONNELL.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 446) relative to the death of Representative TOM LANTOS of California.

There being no objection, the Senate proceeded to consider the resolution.

Mr. DURBIN. I ask unanimous consent to have my name added as a cosponsor of the resolution.

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

Mr. DURBIN. Mr. President, it was a great honor to serve in the U.S. House of Representatives before coming to the Senate and, during that time, to serve with TOM LANTOS of California. His was an extraordinary story of a man who survived the Holocaust and came to the U.S. Congress representing a district in the State of California, rising to the rank of chairman of the Foreign Affairs Committee.

He was as inspiring a speaker as one could ever hear on many topics but especially on the Holocaust and the impact it had on so many innocent people. He was, more than any other person, a leader in acknowledging the bravery and courage of Raoul Wallenberg and so many others who resisted the Holocaust and fought to save the poor victims, including many Jewish people.

TOM LANTOS and his wife Annette traveled across the world, speaking on behalf of the United States and developing strong personal relationships with many leaders overseas. He was truly a great representative of the U.S. House of Representatives and of the U.S. Government.

A few weeks ago, we were surprised to learn that he was suffering from cancer and announced he would not be running for reelection. I didn't realize at the time how grave his condition was. His passing over the weekend brings a reminder of his service to our country, his service to the State of California, and the loss which those of us who counted him as a friend will endure in these days of mourning.

I am happy to join as a cosponsor of this resolution in tribute to Congressman LANTOS.

I ask unanimous consent that the resolution be agreed to, the motion to reconsider be laid upon the table with no intervening action or debate, and that any statements relating to the measure be printed in the RECORD.

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

The resolution (S. Res. 446) was agreed to, as follows:

S. RES. 446

Resolved, That the Senate has heard with profound sorrow and deep regret the announcement of the death of the Honorable Tom Lantos, late a Representative from the State of California.

Resolved, That the Secretary communicate these resolutions to the House of Representatives and transmit an enrolled copy thereof to the family of the deceased.

Resolved, That when the Senate adjourns or recesses today, it stand adjourned or recessed as a further mark of respect to the memory of the deceased Representative.

ORDERS FOR TUESDAY, FEBRUARY 12, 2008

Mr. DURBIN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand adjourned until 10 a.m. Tuesday, February 12; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and that the Senate then resume consideration of S. 2248, the Foreign Intelligence Surveillance Act, as under the previous order; and that the Senate recess from 12:30 to 2:15 p.m. to allow for the weekly caucus luncheons.

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

PROGRAM

Mr. DURBIN. Tomorrow, there will be no morning business. At approximately 10 a.m., the Senate will resume consideration of the FISA legislation and proceed to a series of votes on the remaining pending amendments to the bill.

ORDER FOR ADJOURNMENT

Mr. DURBIN. I ask unanimous consent that the Senate stand adjourned following the remarks of Senator SPECTER and Senator DODD, under the previous order, and the provisions of S. Res. 446, as a further mark of respect to the memory of deceased U.S. Representative TOM LANTOS of California.

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

The Senator from Pennsylvania.

FISA

AMENDMENT NO. 3927

Mr. SPECTER. Mr. President, I have sought recognition to comment on a pending amendment sponsored by Senator WHITEHOUSE and myself. I am delighted to see Senator WHITEHOUSE occupying the chair. I have a receptive, though a limited, audience.

I begin by thanking the Senate personnel for staying late. Monday is a day when I customarily travel the State—Scranton, Harrisburg—and arrive late in the day. I am pleased to see Senator DODD is also speaking so that my late arrival is not the sole cause. But we do have to work late because the majority leader has scheduled votes on these issues tomorrow. I wanted an opportunity to supplement earlier statements which I made on this issue because I believe it is an important issue on which the Senate needs to focus.

The legislation and oversight and judicial review since 9/11 have provided a historic confrontation among the three branches of Government on the basic doctrine of separation of powers. When I say it is historic, I do not believe that is an overstatement. There is no doubt that the events of 9/11 require a vigorous response by the United States to fight terrorism. The brutal, heinous murder of 3,000 Americans and the continuing threat of al-Qaida worldwide require that we fight terrorism with great vigor. At the same time, it is important that constitutional rights be maintained. The fact is that the Congress has been very ineffective in limiting the expansion of Executive power. Only the courts have been able to maintain a balance.

The specific issue involves the effort to give the telephone companies retroactive immunity and foreclose some 40 lawsuits in some Federal court which are pending at the present time. There is no doubt that the information reportedly obtained by the telephone companies for national security is vital and needs to be maintained. But there is a way to keep that information flowing and still maintain the constitutional balance by implementing the amendment which Senator WHITEHOUSE, the Presiding Officer, and I have introduced, the essence of which is to substitute the U.S. Government as the party defendant.

In that situation, the Government would have the identical defenses the telephone companies now have—no more, no less. For example, customarily the Federal Government has the defense of sovereign immunity. You can't sue the Federal Government unless the Government consents or unless the Congress of the United States says

you can sue the Government. The Congress of the United States is the final determiner of that; of course, with Presidential signature or with an override, if the President vetoes.

So in this situation, the Government being substituted for the telephone companies would not have the governmental immunity defense because the telephone companies do not have it. The Government would have the state secrets defense because it has intervened in the cases against the telephone companies to assert the defense of state secrets, so that if state secrets are involved, that may block the plaintiffs' cases. Under our amendment the Government would continue to have the availability of a state secrets defense.

I doubt very much there will be any monetary awards in these cases, but that is not for me to decide. That is for the judicial process to decide, to run its course.

When I say the legislative branch has not been successful in oversight in limiting the expansion of Executive power, I do so because of what has happened with the terrorist surveillance program.

The Foreign Intelligence Surveillance Act is an explicit statute which is the law of the land, explicitly stating that wiretapping can occur only with judicial authority. The tradition is for the Government to present an affidavit containing probable cause to warrant the wiretap that goes before a judge. The judge reviews it. If probable cause is present, then there may be an invasion of privacy under our Constitution with that constitutional safeguard of a neutral magistrate.

The President has taken the position that he does not have to be bound by the Foreign Intelligence Surveillance Act because of his article II powers under the Constitution. He is arguing that the statute cannot affect the President's constitutional authority, and he is correct as a principle of law. But the question is whether he has that authority. And the terrorist surveillance program was secret from the time it was put into effect shortly after 9/11/2001 until mid-December 2005, when the Senate was in the midst of the final day of debate on the PATRIOT Act reauthorization, which was to give the law enforcement authorities broader power.

I chaired the Judiciary Committee at that time and was arguing to move ahead with the PATRIOT Act re-authorization when that morning the news came across that there had been a secret program in effect. That scuttled our efforts to get the PATRIOT Act passed that day, with the comment being made that some were prepared to vote for the PATRIOT Act re-authorization until they found out about this secret program they hadn't known about.

A long time has passed since December 2005. That matter is still tied up in the courts. But the courts, at least, are available to make a decision on that ultimately—it may take some time, but to make a decision on it.

Similarly, the administration, the President has ignored the National Security Act of 1947 which explicitly states that the executive branch must give notice to the intelligence committees of the House and Senate where programs are carried out like the terrorist surveillance program. The President did not follow that statute. Again, the underlying contention is that he has power under article II so that he doesn't have to follow the statute.

Finally, he did make those matters available. He did so on the eve of the confirmation of General Hayden as head of the Central Intelligence Agency. So finally, under political pressure—he couldn't get General Hayden confirmed unless he made them available—he did so.

We have had other illustrations. We have had the signing statements where the President issues a statement when he signs legislation into law which modifies what Congress has passed.

I will be very specific. The Constitution provides that each House passes legislation. There is a conference submitted to the President. He either signs it or vetoes it. But when the President got the PATRIOT Act re-authorization with provisions which had been negotiated as to Judiciary Committee oversight on how those law enforcement powers could be carried out, the President issued a signing statement—and this had been negotiated between the Judiciary Committee and the President's employees—the President issued a signing statement and changed the thrust of the statute.

In a widely publicized matter involving interrogation techniques, the Senate passed, on a 90-to-9 vote, limitations on Executive power in the Detainee Treatment Act. There was a meeting between President Bush and Senator MCCAIN, author of the provision, limiting executive authority. We passed the bill, and the President signed it but with reservation that his executive authority under article II did not deprive him of authority to handle the situation as he chose. But in the midst of all this, the courts have been effective. The courts have limited Executive power.

In the case of Hamdan v. Rumsfeld, the Supreme Court held that the President's military commissions violated the Uniform Code of Military Justice and lacked any congressional authorization. In short, the Court held the President cannot establish a military commission to try Hamdan unless Congress granted him the authority to do so.

In Hamdi v. Rumsfeld, the Supreme Court said that due process requires a citizen held as an enemy combatant be given a meaningful opportunity to contest the factual basis for that detention before a neutral decisionmaker.

In the celebrated case of Rasul v. Bush, the Supreme Court held that the Federal habeas corpus statute gave district courts jurisdiction to hear challenges by aliens held at Guantanamo Bay.

In Doe v. Gonzales in September of last year, the U.S. District Court for the Southern District of New York struck down the permanent gag orders issued with national security letters as a violation of the First Amendment.

In Hepting v. AT&T, Chief Judge Vaughn Walker of the Northern District of California held that the publicly available information concerning the terrorist surveillance program was not subject to the state secrets defense.

In the very heavily publicized case of Padilla, the fourth circuit initially held that the executive had the authority to hold Padilla as an enemy combatant in September of 2005. Then when Padilla petitioned the Supreme Court for certiorari, it looked as if that might be overturned. The Government moved for authorization to transfer Padilla and to vacate the decision. They anticipated an unfavorable decision and they tried to moot it out; that is, render it meaningless. Judge Luttig, writing for the fourth circuit, was very strong in rejecting the Government's position, saying this:

> Because we believe that the transfer of Padilla and the withdrawal of our opinion at the government's request while the Supreme Court is reviewing this court's decision of September 9 would compound what is, in the absence of explanation, at least an appearance that the government may be attempting to avoid consideration of our decision by the Supreme Court, and also because we believe that this case presents an issue of such especial national importance as to warrant final consideration by that court—

That is, the Supreme Court—

> we deny both the motion and the suggestion.

Pretty strong language, telling the Government what they can and what they can't do.

The Government is not going to listen to the Congress, but the Government listens to the court.

When the issue arose as to the destruction of the CIA tapes, Senator LEAHY and I wrote the Attorney General asking for information as to what had happened, and the Attorney General wrote back and said: We are not going to give you any information at this time. But we got no information. Then the word was that it was political, what was being done. Then a Federal district court ordered the Government to file a report with the court as to what had happened on the destruction of the CIA tapes. Well, nobody said the court decision was political. You can't challenge the judicial decision except to take an appeal, and that is the process we follow.

I recently made a trip to Pakistan. Congressman PATRICK KENNEDY and I went to Pakistan to take a look at what was going on there because Pakistan is so important. The country has nuclear weapons but a very unstable government. We met with President Musharraf. We were scheduled to meet with Benazir Bhutto at 9 p.m. on December 27. While we were preparing for

the meeting—she had scheduled it at 9 o'clock in the evening because she had a full day of campaign activities. While we were preparing for the meeting, we found out about 6:30, 7 o'clock, she had been assassinated, which was a terrible blow, not only on a personal level. I had come to know her to some extent when she was Prime Minister of Pakistan. But she had the potential as an extraordinary political figure to unify Pakistan. She had a remarkable educational background. She was educated at Harvard, also at Oxford; very glamorous, movie star beautiful, a great political figure with a chance to unify the country. Now we start from scratch.

Congressman KENNEDY and I questioned President Musharraf about what he was doing. He had gotten $10 million since 9/11 to act against al-Qaida. Why hadn't Osama bin Laden been captured? There were a lot of indications that the money was not being used for the purpose for which it was appropriated. President Musharraf said to Congressman KENNEDY and me that he didn't like the conditionality, and we pointed out to him that is the way we function. We don't give $10 million for use by President Musharraf any way he likes. Then we raised a question about what President Musharraf was doing with the Supreme Court. He held the Chief Justice in house arrest. He dismissed many of the justices. He appointed a favorable Supreme Court. Well, the United States is not Pakistan. In Pakistan, the chief executive, President Musharraf, tells the Supreme Court what to do. He suspends the Chief Justice. He fires half of the court.

In the United States, under our checks and balances, the President of the United States listens to what the Supreme Court of the United States says. A fundamental of our society is the separation of powers. That is the very basis of how we function in the United States, with the executive having certain powers, the Congress having certain powers, and the Court having certain powers. Regrettably, the evidence is conclusive that the Congress has been ineffective in congressional oversight. The protocol is the chairman of the Judiciary Committee and the ranking member are told about what is happening on serious constitutional issues. I was chairman of the Judiciary Committee when the terrorist surveillance program was in operation, and neither the ranking member, Senator LEAHY, nor I, were told about what was going on. The President is taking the position that he is not bound by statute, and he may be right. He may be right, but in our society, the courts have to make that decision.

I believe it would be a serious step to close down the courts where some 40 cases are pending. Let them go through the judicial process. Now if we had a choice of having the benefit of what the telephone companies are doing and closing down the courts, that might be one thing. But Senator WHITEHOUSE and I have structured an amendment, cosponsored by other Senators, to have both of those benefits operative. We can maintain the telephone companies providing whatever information they are providing, and at the same time keep the courts open by substituting the Government as the party defendant.

We are continuing in the midst of an historic confrontation. It is testing the mettle of our constitutional process. It is testing the mettle of our constitutional process because of the importance of being vigorous in fighting al-Qaida. The telephone companies have been good citizens and they ought not to be held liable for whatever it is they have done. But the Government can step in, and if there are verdicts which, as I say, I very much doubt, it is a cost of national defense. It ought to be paid by the Treasury of the United States, and the courts ought to be kept open.

Senator DODD is about to address the Chamber. I know he is opposed to granting retroactive immunity, and he has a very powerful argument, and may the RECORD show he is nodding in the affirmative. That is what we lawyers do when we have a little support, even if it is only a nod of the head or a gesture. I greatly admire what Senator DODD is doing here and what he has done since he was elected to the Senate in 1980. He and Senator Alan Dixon came to the Senate at the same time as two newly elected Senators on the Democratic side of the aisle. They were outnumbered by Republican Senators who were elected, 16 of us for that election, 16 to 2. But now Senator DODD has narrowed the odds and only Senator GRASSLEY and I remain of those 16, so it is only 2 to 1. Of course, when it was 2 to 16 it was a fair fight, and when it is 1 to 2, Senator DODD may have the advantage. Who knows. I say that only in jest. But we are about to hear some strong arguments and some real oratory on these issues.

But we don't have to make a choice between having the information and having the courts open. You can do both if the amendment which Senator WHITEHOUSE and I have offered is adopted.

I thank the Chair and yield the floor and defer to my distinguished colleague from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, first, let me thank my good friend from Pennsylvania, whom I always enjoy listening to. I enjoyed particularly hearing his comments about President Musharraf and Benazir Bhutto, who I had the privilege and pleasure of knowing for some time over the last 20 years. As do all of us here, I care deeply about what happens in Pakistan, and I admire remarkable leadership. I was stricken by her loss and the tragic way in which she lost her life in her effort to bring democracy to her country. So I associate myself with the remarks of Senator SPECTER who was there, I know. In fact, I listened with great interest to his comments and thoughts at the time when he and Congressman PATRICK KENNEDY were there on a mission together. So I once again thank him.

I know he talked about our arrival some 27 years ago, when the two of us arrived here, and it is true there were 16 Republicans and two Democrats. I always like to point out that there are two fine Republicans still here, Senator GRASSLEY and Senator SPECTER, and 50 percent of the Democrats who were elected that year are still in this Chamber. So I remain of the two of us, Alan Dixon being the other Member.

I look up and I see the Presiding Officer. Any time I get up to address this issue, the distinguished Senator from Rhode Island is the Presiding Officer. He has heard my thoughts on this issue now since December. I think it has been almost 20 hours I have spoken on the subject matter of the Foreign Intelligence Surveillance Act and the issue of retroactive immunity. I will be trying to convince my colleagues to vote against cloture tomorrow so we can force the committees to go back and adopt the Judiciary Committee approach rather than the one adopted by the Intelligence Committee which gives retroactive immunity to the telecom industry.

I note as well that the House, the other body, in its consideration of this matter, agreed with the Judiciary Committee and did not include retroactive immunity in their Foreign Intelligence Surveillance Act amendments. The House reached the conclusion that the retroactive immunity was not warranted, that the courts should be given the opportunity to decide the legality or illegality of the telecom industry's decision to agree to the administration's request to allow the unfettered surveillance of millions of telephone calls, faxes, and e-mails.

Senator FEINGOLD of Wisconsin and I have offered an amendment to strike section 2 of the bill, which would then put the legislation roughly on parity with the House-passed legislation and deliver that to the President. The President has said: If you do that, I will veto the bill, which I regret deeply. The idea that you veto all of the other amendments dealing with foreign intelligence because you didn't provide retroactive immunity to a handful of telephone companies is rather breathtaking when you consider the vulnerability that can pose and the inability of us to collect the important surveillance, the intelligence we need to keep our country secure and safe.

Mr. President, I am not normally accustomed to engaging in lengthy conversations about any subject. Certainly it is the privilege and right of every Senator to engage in extended debate on a subject about which they care passionately. I cannot think of another occasion in the last 20 years, 25 years, when I have engaged in extended debate on any subject matter. It doesn't suggest there haven't been moments

when I thought it was warranted, and others certainly provided that opportunity or we resolved the matters prior to using that tool that has been available to every Member of this Chamber since the founding of our Republic. But I care deeply about this issue. It is not just a passing issue; it is not just one section of a bill.

It goes far beyond the words or language of even the companies involved here. It goes to the very heart of who we are as a nation, as a people. Our willingness or ability to understand the value and importance of the rule of law is an issue that transcends any other issue we grapple with, the understanding of how important it is to protect and defend the rule of law, our Constitution, to guarantee the rights and liberties of every citizen of our country.

Tonight, I will engage in a rather lengthy conversation about this issue, with my apologies to the staff and others who have to spend time listening to this conversation. But I want people to know how important this issue is. This is very important. It doesn't get any more important than this one as to whether millions of Americans' telephone conversations, e-mails, and faxes over the past 5 years were listened to, eavesdropping that would still be ongoing were it not for disclosed reports by journalists and a whistleblower that revealed this program. It would still be ongoing, without a court order and without a warrant. That is dangerous.

The very rationale which gave birth to the FISA some three decades ago was specifically designed to deal with the very fact situation that causes me to rise and talk about this subject matter this evening. FISA intended to balance two legitimate issues—gathering information to keep us secure, while protecting the rights and liberties of every single American citizen against an unwarranted invasion of their privacy. It has never been easy to maintain that balance. It is never perfect, as I said earlier this afternoon, but it ought to be our common goal, regardless of party and ideology, to do our very best to strike that balance. That is what this issue is, and that is why it is so important.

If we set the precedent by a vote tomorrow that keeps this provision in the bill, and it remains so in the conference with the House of Representatives, we will be setting a precedent which, I suspect, future administrations may point to under a different fact situation, at a different hour, at a different time, when they may decide it is not in their interest to go to a FISA Court. The next request by an administration to provide information may be medical or financial or highly personal information, and they will point to a time when the Senate was given the opportunity to insist that a series of telephone companies go to the courts of this country to determine whether they did the legal thing by turning over information, and the Senate said: No, we are going to grant retroactive immunity.

We will never determine whether you had the right to do so, and implicitly it would sanction the activity by our refusal to strike the language granting the immunity. That is what is at stake in the vote tomorrow, if we are unable to defeat cloture.

That is why I am determined to do everything I can to convince my colleagues of an alternative course. So I urge my colleagues, in the strongest terms that I can, to vote to strip the retroactive immunity from this bill and, if it is not stripped, to vote against cloture.

Not only would this bill ratify a domestic spying regime that has already concentrated far too much unaccountable power in the President's hands, in its current form it places above the law the telecommunications companies that may have violated the privacy and trust of millions of American citizens.

In December, I opposed retroactive immunity on the Senate floor for some 10 hours in this Chamber. In the weeks since then, I have continued to speak out against it.

Unwarranted domestic spying didn't happen in a panic or short-term emergency—not for a week or a month or even a year. If it had, I might not be here this evening. But the spying went on, relentlessly, for more than five years. And if the press didn't expose it, I imagine it would still be happening today.

I might not be here either if it had been the first offense of a new administration. Maybe not if it even had been the second or third, I might add. I am here this evening because after offense after offense after offense, my frustration has found its breaking point. I am here this evening because of a pattern of continual abuses against civil liberties and the rule of law. When faced with that pattern, we should not act in the interest of the Democratic Party or the Republican Party. We should act in the interest of the Constitution of the United States because we are, above anything else, its temporary custodians. If these abuses had been committed by a President of my own party, I would have opposed them just as passionately as I do this evening.

I am here tonight because of the latest link in that long chain of abuse. It is alleged that giant telecom corporations worked with our Government to compile America's private domestic communications records into a database of enormous scale and scope. Secretly and without a warrant, these corporations are alleged to have spied on their own American customers.

Here is only one of the most egregious examples: According to the Electronic Frontier Foundation:

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

The phone calls of millions of Americans diverted into a secret room controlled by the NSA. That allegation still needs to be proven in a court of law. But before that happens, there is an even simpler question: What do you see in it?

If you only see cables and computers there, the whole thing seems almost harmless. Certainly nothing to get worked up about—a routine security sweep and a routine piece of legislation authorizing it. If that is what you see in the NSA's secret room, I imagine you will vote to extend that immunity.

If you see a vast dragnet for millions of Americans' private conversations, conducted by a Government agency without a warrant, then I believe you will recognize what is at stake. You will see that what is at stake is the sanctity of the law and the sanctity of our privacy as American citizens. You will then oppose this retroactive immunity.

Maybe that sounds overdramatic to some of my colleagues. They will ask: What does it matter, at the end of the day, if a few corporations are sued? They will say: This is a small issue, an isolated case. The law is still safe and sound.

I find that view profoundly wrong. But I will give them this: As long as they keep this small, they win. As long as they keep this case isolated and technical, they win. As long as it is about a few lawsuits, and nothing more, they win. They are counting on the American people to see nothing bigger than that.

I am counting on them to see more and to fear less. So much more is at stake than a few phone calls, a few companies, and a few lawsuits. Mr. President, equal justice is at stake—justice that makes no exceptions. Openness is at stake—an open debate on security and liberty, and an end to warrantless, groundless spying. Retroactive immunity stands against those principles.

It doesn't say: I trust the American people; I trust the courts and judges and juries to come to just decisions. Retroactive immunity says: Trust me.

There are classified documents, we are told, that prove the case for retroactive immunity beyond a shadow of a doubt. But we are not allowed to see them. I have served in this body for more than a quarter century, and I am not allowed to see these documents at all. I am told to trust somebody, believe people when they stand up and tell you exactly what is here. Neither are the majority of my colleagues allowed to see them. We are left entirely in the dark to draw the conclusion that there is nothing to be concerned about. The courts don't need to look at this.

Obviously, I cannot speak for my colleagues, but I would never take ''trust

me'' for an answer—not even in the best of times.

''Trust me.'' It is the offer to hide ourselves in the waiting arms of the rule of men. I cannot put it better than this:

''Trust me'' government is government that asks that we concentrate our hopes and dreams on one man; that we trust him to do what's best for us. My view of government places trust not in one person or one party, but in those values that transcend persons and parties.

Those words were spoken by Ronald Reagan in 1980, the former President of the United States. Those words are every bit as true today, even if some have chosen to forget them. But times of threat and fear blur our view of transcendent values; and those who would exploit those times urge us to save our skins at any cost.

The rule of law has rarely been so fragile. It has really seemed less compelling. What, after all, does the law give us? It has no parades, no slogans; it lives in books and precedents. It cannot entertain us or captivate us or soothe our deepest fears. When set against everything the rule of men has to offer, the rule of law is mute.

That is the precise advantage seized upon, in all times, by the law's enemies.

It is a universal truth that the loss of liberty at home is to be charged to the provisions against danger . . . from abroad.

Those are the words of James Madison, and they are worthy of repetition.

It is a universal truth that the loss of liberty at home is to be charged to the provisions against danger . . . from abroad.

James Madison, the father of the Constitution, made that prediction more than two centuries ago. With the passage of this bill, his words would be one step closer to coming true. So it has never been more essential that we lend our voices to the law and speak on its behalf.

This is our defining question, the question that confronts every generation of Americans since the founding of our Republic: the rule of law, or the rule of men?

How many times must we get the wrong answer?

To those who say this is just about a few telecoms, I answer that this is about contempt for the rule of law, large and small.

This is about the Justice Department turning our Nation's highest law enforcement officers into patronage plums, and turning the impartial work of indictments and trials into the machinations of politics.

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

This is about Congress handing the President the power to designate any individual he wants an ''unlawful enemy combatant,'' hold that individual indefinitely, and take away his or her rights to habeas corpus—the 700-year-old right to challenge your detention. If you think the Military Commissions Act struck at the heart of the Constitution, well, it struck at the Magna Carta while it was at it.

If you think this only threatens a few of us, you should understand that the writ of habeas corpus belongs to all of us. It allows anyone to challenge their detention. Rolling back habeas corpus endangers us all. Without a day in court, how can you prove that you are entitled to a trial? How can you prove that you are innocent? In fact, without a day in court, how can you let anybody know what you have been detained for at all?

The Military Commission Act also gave President Bush the power some say he wanted most of all: the power to get information out of suspected terrorists—by almost any means. The power to use evidence potentially gained from torture.

This is about torture—officially sanctioned torture. As a result of decisions made at the highest levels of our Government, America is making itself known to the world with stories like this one: A prisoner at Guantanamo—to take one example out of hundreds—was deprived of sleep for over 55 days, a month and 3 weeks. Some nights he was doused with water or blasted with air conditioning. After week after week of this delirious, shivering wakefulness, on the verge of death from hypothermia, doctors strapped him to a chair—doctors, healers who took the Hippocratic oath to ''do no harm''—pumped him full of three bags of medical saline, brought him back from death, and sent him back to his interrogators.

To the generation coming of age around the world in this decade, that is America. Not Normandy, not the Marshall Plan, not Nuremberg. Guantanamo.

This is about the CIA destroying tapes containing the evidence of harsh interrogations—about the administration covering its tracks in a way more suited to a banana republic than to the home of freedom.

This is about waterboarding, a technique invented by the Spanish Inquisition, perfected by the Khmer Rouge, and in between, banned—originally banned for excessive cruelty—by the Gestapo!

Waterboarding's not torture? Listen to the words of Malcolm Nance, a 26-year expert in intelligence and counterterrorism, a combat veteran, and former Chief of Training at the U.S. Navy Survival, Evasion, Resistance and Escape School.

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While training American soldiers to resist interrogation, he writes:

I have personally led, witnessed and supervised waterboarding of hundreds of people. . . . Unless you have been strapped down to the board, have endured the agonizing feeling of the water overpowering your gag reflex, and then feel your throat open and allow pint after pint of water to involuntarily fill your lungs, you will not know the meaning of the word. . . .

It does not simulate drowning, as the lungs are actually filling with water. The victim is drowning. How much the victim is to drown depends on the desired result . . . and the obstinacy of the subject.

Waterboarding is slow motion suffocation . . . usually the person goes into hysterics on the board. . . . When done right it is controlled death.

In spite of all that, last week the White House declared that waterboarding is not torture, that waterboarding is legal, and that, if it chooses, America will waterboard again.

This is about Michael Mukasey coming before the Senate and defending the President's power to openly break the law. When he came to the Senate before his confirmation, Mr. Mukasey was asked bluntly and plainly: Is waterboarding constitutional? Mr. Mukasey replied with a head-scratching tautology:

If waterboarding is torture, torture is not constitutional.

Surely we can expect a little more insight from someone so famously well versed in national security law. But Mr. Mukasey pressed on with the obstinacy of a witness pleading the Fifth:

If it's torture. . . . If it amounts to torture, it is not constitutional.

And that is the best this noted jurist, this legal scholar, this longtime judge had to offer on the defining moral issue of this Presidency: claims of ignorance. Word games.

And again last month, he refused categorically to denounce waterboarding. In fact, Mr. Mukasey was asked the easiest question we have in a democracy: Can the President openly break

the law? Can he—as we know he has done already—order warrantless wiretapping, ignore the will of Congress, and then hide behind nebulous powers he claims to find in the Constitution?

Mr. Mukasey's response: The President has ''the authority to defend the country.''

And in one swoop, the Attorney General conceded to the President nearly unlimited power, as long as he finds a lawyer willing to stuff his actions into the boundless rubric of ''defending the country.'' Unlimited power to defend the country, to protect us as one man sees fit, even if that means listening to our phone calls, even if that means holding some of us indefinitely.

This is about extraordinary rendition—outsourced torture. It is about men this administration prefer we did not know exist. But we do know.

One was a Syrian immigrant raising his family in Canada as a citizen. He wrote computer code for a company called Math Works. He was planning to start his own tech business. On a trip through New York's JFK Airport, he was arrested by U.S. Federal agents. They shackled him and bundled him into a private CIA plane which flew him across the Atlantic Ocean to Syria.

This man spent the next 10 months and 10 days in a Syrian prison. His cell was 3 feet wide, the size of a grave. Some 300 days passed alone in that cell, with a bowl for his toilet and another bowl for his water, and the door only opened so he could go wash himself once a week, though it may have been more or less because the cell was dark and he lost track of time.

The door only opened for one reason: for interrogators who asked him, again and again, about al-Qaida. Here is how it was described:

> The interrogator said, ''Do you know what this is?'' I said, ''Yes, it's a cable,'' and he told me, ''Open your right hand.'' I opened my right hand, and he hit me like crazy. It was so painful, and of course I started crying, and then he told me to open my left hand, and I opened it, and he missed, then hit my wrist. And then he asked me questions. If he does not think you are telling the truth, then he hits again.

The jail and the torturers were Syrian, but America sent this man there with full knowledge of what would happen to him because it was part of a longstanding secret program of ''extraordinary rendition.'' America was convinced that he was a terrorist and wanted the truth beaten out of him.

No charges were ever filed against him. His adopted nation's government—Canada, one of our strongest NATO allies—cleared him of all wrongdoing after a yearlong investigation and awarded him more than $10 million in government compensation for his immense pain and suffering—but not before he was tortured for 10 months in a cell the size of a grave. Our own Government, I note, has refused to even acknowledge that his case exists.

It is about a German citizen living in the city of Ulm with his wife and four children. On a bus trip through Eastern Europe, he was pulled off at a border crossing by armed guards and held for 3 weeks in a hotel room where he was beaten regularly. At the end of 3 weeks, he was drugged and shipped on a cargo plane to Kabul, Afghanistan.

For 5 months he was held in the Salt Pit, a secret American prison staffed by Afghan guards. All he had to drink was stagnant water from a filthy bottle. Again and again, masked men interrogated him about al-Qaida. And finally, he says, they raped him.

He was released in May of 2004. Scientific testing confirmed his story of malnourishment, and the Chancellor of Germany publicly acknowledged that he was wrongfully held. What was his crime? Having the same name as a suspected terrorist. Again, our own Government has refused to even acknowledge this case exists.

There are not enough words in the world to cover the facts. If you would like to define torture out of existence, be my guest. If you would rather use a Washington euphemism—''tough questioning,'' ''enhanced interrogation''—feel free. Feel free to talk about ''fraternity hazing'' such as Rush Limbaugh did, or to use a favorite term of Vice President CHENEY, ''a dunk in the water,'' as he described waterboarding. Call it whatever you like. And when you are through with all of your evasions, the facts will still be waiting for you—the fact of waterboarding, ''controlled death,'' the fact of ''outsourced torture,'' the fact of secret prisons, the fact of month-long sleep deprivation, the fact of the President's personal power to hold whomever he likes for as long as he would like.

Have I gone wildly off the topic? Have I brought up a dozen unrelated issues? I don't think, Mr. President—I don't think I have at all.

We are deceiving our ourselves when we talk about the U.S. attorneys issue, the habeas issue, the torture issue, the rendition issue, the secrecy issue. As if each one were an isolated case! As if each one were an accident! When we speak of them as isolated, we are keeping our politics cripplingly small, and as long as we keep them small, the rule of men is winning. There is only one issue here—only one. It is the law issue, the rule of law. Does the President serve the law or does the law serve the President?

Each insult to our Constitution comes from the same source. Each springs from the same mindset. And if we attack this contempt for the law at any point, we will wound it at all points.

That is why I am here this evening. Retroactive immunity is on the table today, but also at issue is the entire ideology that justifies it, the same ideology behind torture and executive lawlessness. Immunity is a disgrace in itself, but it is far worse in what it represents. It tells us that some believe in the courts only so long as the verdict goes their way. It puts secrecy above sunshine and fiat above the law.

Did the telecoms break the law? That I don't know. Pass immunity and, of course, we will never know. A handful of favored corporations will remain unchallenged. Their arguments will never be heard in a court of law. The truth behind this unprecedented domestic spying will never see the light of day.

''Law'' is a word that we barely hear from the supporters of immunity. They offer neither a deliberation about America's difficult choices in an age of terrorism nor a shared attempt to set for our times the excruciating balance between security and liberty. They merely promise a false debate on a false choice: security or liberty, but never both.

I think differently, and I hope others do as well. I think that America's founding truth is unambiguous: security and liberty, one and inseparable, and never one without the other.

Secure in that truth, I offer a challenge to immunity supporters. You want to put a handful of corporations above the law. Could you please explain how your immunity makes any one of us any safer at all?

The truth is that a working balance between security and liberty has already been struck. In fact, it has been settled for decades. For three decades, in fact, FISA, 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 determined to investigate executive abuses of power. Unsurprisingly, they found that when Congress and the courts substitute ''trust me'' for real oversight, massive lawbreaking 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 had opened hundreds of thousands of Americans' letters without warning or warrant. In sum, Americans had sustained a severe blow to their fourth amendment rights ''to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. . . .''

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 was not the problem. Unchecked, unregulated, unwarranted surveillance was. What surveillance needed, in a word, was legitimacy. And in America, as the Founders understood, power becomes legitimate when it is shared, when Congress and the courts check that attitude which so often crops up in the executive branch—''if the President does it, it's not illegal.''

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

indeed. Allow me to quote from that final report:

The critical question before the Committee was to determine how the fundamental liberties of the people can be maintained in the course of the Government's effort to protect their security.

The delicate balance between these basic goals of our system of government is often difficult to strike, but it can, and must, be achieved.

We reject the view that the traditional American principles of justice and fair play have no place in our struggle against the enemies of freedom. Moreover, our investigation has established that the targets of intelligence activity have ranged far beyond persons who could properly be characterized as enemies of freedom. . . .

We have seen segments of our Government, in their attitudes and action, adopt tactics unworthy of a democracy, and occasionally reminiscent of the tactics of totalitarian regimes.

We have seen a consistent pattern in which programs initiated with limited goals, such as preventing criminal violence or identifying foreign spies, were expanded to what witnesses characterized as ''vacuum cleaners,'' sweeping in information about lawful activities of American citizens.

The Senators concluded:

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

What a strange echo, what an incredibly strange echo, we hear in those words. The words I just read could have been written yesterday. Three decades ago our predecessors in this Chamber understood that when domestic spying goes too far, it threatens to kill just what it promises to protect: an America secure in its liberty. That lesson was crystal clear more than 30 years ago. Why is it so cloudy tonight? Why is it so cloudy on the eve of an important vote?

And before we entertain the argument that ''everything has changed'' since those words were written, remember: The men who wrote them had witnessed World War and Cold War. They had seen the Nazi and Soviet threats and were living every day under the cloud of a nuclear holocaust.

Mr. President, I ask this: Who will chair the commission investigating the secrets of warrantless spying years from today? Will it be a young Senator sitting in this body today? Will it be someone not yet elected? What will that Senator say when he or she comes to our actions, reads in the records of 2008 how we let outrage after outrage after outrage slide with nothing more than a promise to stop the next one? I imagine that Senator will ask of us: Why didn't they do anything? Why didn't they fight back? Why didn't they stand up? Why didn't they vote down retroactive immunity? What were they thinking? What more do you need to know? How many instances of abuse do you have to learn about? When do you stop? When do you say enough is enough? In February of 2008, when no one could doubt any more what the administration was doing, why did they sit on their hands? Why did they sit on their hands? Why did they pass by as if nothing had ever happened and grant retroactive immunity?

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

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

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

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—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 since, FISA has accomplished its mission. It has been a valuable tool for conducting surveillance of terrorists and those who would harm our beloved Nation. And every time Presidents have come to Congress openly to ask for more leeway under FISA, Congress has worked with them. Congress has negotiated it together. Congress and Presidents have struck a balance that safeguards America while doing its utmost to protect Americans' privacy.

This summer, Congress made a technical correction to FISA, enabling the President to wiretap without a warrant conversations between two foreign targets, even if those conversations are routed through American corporate computers. For other reasons, I felt this summer's legislation went too far, and I opposed it, but the point is Congress once again proved its willingness to work with the President on foreign intelligence surveillance.

Isn't that enough?

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, in a true emergency, the FISA Court would do nothing to slow down intelligence gathering.

Isn't that enough?

As for the FISA court? Between 1978 and 2004, according to the Washington Post, the FISA Court approved 18,748 warrants and rejected 5. Let me repeat that. The FISA Court, according to the Washington Post, approved 18,748 warrants and rejected 5. The FISA Court has sided with the executive branch 99.9 percent of the time.

Isn't that enough?

Is anything lacking? Have we forgotten something? Isn't all this enough to keep us safe?

We all know the answer we received. This complex, fine-tuned machinery, crafted over three decades by 3 branches of Government, 4 Presidents, and 12 Congresses was ignored. It was a system primed to bless nearly any eavesdropping a President could conceive, and spying still happened illegally.

If the shock of that decision has yet to sink in, think of it this way: President Bush ignored not just a Federal court but a secret Federal court. Not just a secret Federal court but a secret Federal court prepared to sign off on his actions 99.9 percent of the time. A more compliant court has never been conceived. Still, that wasn't good enough.

So I will ask the Senate candidly, and candidly it already knows the answer: Is this about security or about power? Why are some fighting so hard for retroactive immunity? The answer, I believe, is immunity means secrecy, and secrecy means power.

It is no coincidence to me that the man who proclaimed ''If the President does it, it is not illegal''—Richard Nixon—was the same man who raised executive secrecy to an art form. The Senators of the Church Committee expressed succinctly the deep flaw in the Nixonian executive: ''Abuse thrives on secrecy.'' And in the exhaustive catalogue of their report, they proved it.

In this push for immunity, secrecy is at its center. We find proof in immunity's original version: a proposal to protect not just telecoms but everyone involved in the wiretapping program. In their original proposal, that is what they wanted, to immunize themselves and absolutely everyone involved in this program. Not just the companies but everyone from the executive branch on down. They wanted to immunize every single human being.

Think about it. It speaks to their fear and perhaps their guilt—their guilt that they had broken the law and their fear in the years to come they would be found liable or convicted. They knew better than anyone else what they had done, and they must have had good reason to be afraid. Thankfully, immunity for the President is not part of the bill before us, and on previous occasions I have commended Senator ROCKEFELLER and Senator BOND and the committee members for not agreeing to the administration's request for granting immunity for every single person. But remember, they made the request. That is what they wanted. While it is not in the bill, it ought to be instructive. If anybody

wonders what this is all about, when you go back and remember that this administration requested of this committee that every single human being involved in the surveillance program be immunized and protected by the act of Congress, that is instructive. That is enlightening as to what the true intent of this administration has been when it comes to this program.

As I said: Thankfully, immunity for the executive branch is not part of the bill before us, but the original proposal tells us something very important. This is, and always has been, a self-preservation bill. Otherwise, why not have a trial and get it over with? If the proponents of retroactive immunity are right, the corporations would win in a walk. After all, in the official telling, the telecom industry was ordered to help the President spy without a warrant and they patriotically complied. We have even heard on this floor the comparison between the telecom corporations to the men and women laying their lives on the line in Iraq.

But ignore that. Ignore for a moment the fact that in America we obey the laws, not the President's orders. Ignore that not even the President has the right to secure a bully into breaking the law. Ignore that the telecoms were not unanimous; one, Qwest, wanted to see the legal basis for the order, never received it, and so refused to comply. Ignore that a judge presiding over the case ruled:

> 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, then 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 less than 5 minutes.

If the telecoms are as defensible as the President says, why doesn't the President let them defend themselves? If the case is so easy to make, why doesn't he let them make it? It can't be that he is afraid of leaks. Our Federal court system has dealt for decades with the most delicate national security matters, building up expertise and protecting classified information behind closed doors—ex parte, in camera. We can expect no less in these cases. No intelligence sources need be compromised. No state secrets need to be exposed. After litigation, at both the district court and circuit court level, no state secrets have been exposed.

In fact, Federal District Court Judge Vaughn Walker, a Republican appointee, I might add, has already ruled the issue can go to trial without putting state secrets in jeopardy. He reasonably concluded that the existence of a terrorist surveillance program is hardly a secret at all, and I quote him.

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

As the state secrets privilege is invoked to stall these high-profile cases, it is useful to consider that privilege's history. In fact, it was tainted at its birth by a President of my own party, Harry Truman. In 1952, President Truman successfully invoked the new privilege to prevent public exposure of a report on a plane crash that killed three Air Force contractors.

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

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

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

And that ought to be the epitaph for the last 6 years—sacrificing liberty for no apparent enhancement of security. Worse than selling our soul, we are giving it away for free.

It is equally wrong to claim that failing to grant this retroactive immunity will make the telecoms less likely to cooperate with surveillance in the future. The truth is, that since the 1970s, the Foreign Intelligence Surveillance Act has compelled telecommunications companies to cooperate with surveillance, when it is warranted. What is more, it immunizes them. It has done that for 25 years.

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

In sum, we know that giving the telecoms their day in court, giving the American people their day in court, would not jeopardize an ounce of our security. And it could only expose one secret: The extent to which the rule of law has been trampled upon. That is the choice at stake this evening and tomorrow when we vote on this matter: Will the secrets of the last years remain closed in the dark or will they be open to the generations to come, to our successors in this Chamber, so they can prepare themselves to defend against future outrages of power and usurpations of law from future Presidents, of either party, as certainly they will come? As certainly they will come.

Thirty years after the Church Committee, history repeated itself. Even though I probably thought in those days, this will never happen again. Well, here we are again. As certain as I am standing here this evening, at some future time, there will be an executive, a President, who will seek to compromise the very same principles. And just as we reached back 30 years ago during this debate to a hallowed time when another Senate, faced with similar challenges, reached entirely different conclusions than we are about to make, some future generation will reach back to ours and ask: What did they say? What did they do? How did they feel about this? What actions did they take?

The idea that this body would grant retroactive immunity in the face of these challenges and deny the courts an opportunity to determine whether, at the mere request of a President, major companies, for years on end, can sweep up, vacuum up—to use the Church Committee's language—every telephone conversation, every fax, every e-mail of millions and millions of Americans, is a precedent I don't think we want as part of our heritage for coming generations.

And believe me, they will look back to it. If those who come after us are to prevent it from occurring again, they need the full truth.

Constitutional lawyer and author Glenn Greenwald expressed the high stakes this way:

> The Bush administration will be gone in 11 months. But—in the absence of some meaningful accountability—all of this will remain . . . If . . . these theories remain undisturbed and unchallenged, and . . . all of these crimes go uninvestigated and unpunished, that will have a profound impact on changing our national character, in further transforming the type of country we are.

That is why we must not see these secrets go quietly into the good night. I am here this evening because the truth is no one's private property. It belongs to every one of us, and it demands to be heard.

''State secrets,'' ''patriotic duty'': Those, as weak as they are, are the arguments the telecoms' advocates use when they are feeling high-minded. When their thoughts turn baser, they make their arguments as amateur economists.

Here is how Director of National Intelligence 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.

That is an incredible statement. It is amazing that a person in high Government would suggest that no matter how warranted this investigation may be, there is a higher calling, that we should not put these companies in any kind of financial jeopardy, that we have to provide liability protection to these private sector entities because it might bankrupt them.

To begin with, it is a clear exaggeration. First and foremost, we are talking about some of the most successful

companies in the United States, not only today but ever. Some of these companies have continued to earn record profits and sign up record numbers of subscribers at the same time as this very public litigation, totally undermining the argument, I might add, these lawsuits are doing the telecoms severe reputational damage.

Remember, the discussion about these telecoms has now gone on for months. And yet in the public debate about whether the courts ought to be able to examine these issues, there are reports that these companies have been accumulating record profits. Companies that size could not be completely wiped out by anything but the most exorbitant and unlikely judgment. To assume that the telecoms would lose and that the judges would hand them down such back-breaking penalties is already to take several leaps.

The point, after all, has never been to finally cripple our telecommunications industry. That is not the point here at all. In fact, some have said: Look, I will support you striking this immunity, provided you put a cap on damages these companies would suffer if in fact the plaintiffs prove to be correct. And I am more than happy to entertain that. I do not believe it is necessary, but if that is the argument, a damages cap would answer all of Mike McConnell's concerns, without even having to bring up immunity. I am prepared to agree to any kind of a cap you want—because the point to me is not the damages they pay, but the damage they have done.

But to suggest somehow that there is a pricetag companies would have to pay which is more valuable than protecting people's privacy is a stunning, breathtaking comment from a high Government official, in my view. It is extremely troubling that our Director of National Intelligence even bothers to pronounce on ''liability protection for private sector entities.'' How did that even begin to be relevant to letting this case go forward? Since when do we throw entire lawsuits out because the defendant stood to lose too much? In plain English, 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. Rarely in public life in the years I have served here have I ever heard an argument as venal as that on a matter as serious as this one. It astounds me that some can speak in the same breath about national security and the bottom line. 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! And so, at the rock bottom of its justifications, the telecoms' advocates are essentially arguing that immunity can be bought.

The truth is exactly, of course, the opposite. The larger the corporation, frankly, the greater the 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, we are talking about one of the most massive violations of privacy in American history. If reasonable search and seizure means opening a drug dealer's apartment, the telecoms' alleged actions would be the equivalent of strip-searching everyone in the building, ransacking their bedrooms, prying up all the floorboards. The scale of these cooperations opens unprecedented possibilities for abuse, possibilities far beyond the power of any one individual.

If the allegation against the telecoms is true, it constitutes one of the most massive violations of privacy in American history. And it would be inconceivable without the size and resources of a corporate behemoth, the same size that makes Mike McConnell fear the corporations' day in court. That is the massive scale we are talking about, and that massive scale is precisely why no corporation must be above the law.

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

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

Again, from a Republican appointee to the Federal bench. But the arguments of the President's allies sink even lower. Listen to the words of a House Republican leader spoken on Fox News. Candidly, they are shameful.

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

Of course, some of the ''typical greedy trial lawyers'' bringing these suits work for a nonprofit. And the telecoms that some want to portray as pitiful little Davids actually employ hundreds of attorneys, retain the best corporate law firms, and spend multimillion dollar legal budgets.

But if the facts actually matter to immunity supporters, we would not be here. For some, the prewritten narrative takes precedence far above the mere facts; and here, it is the perennial narrative of the greedy trial lawyers.

With that, some can rest content. They conclude that we were never serious about the law, or about privacy, or about checks and balances; it was about the money all along.

But we will not let them rest content. We are extremely serious. There can no longer be any doubt: One by one the arguments of the immunity supporters, of the telecoms' advocates, fail.

I wish to spend a few minutes and detail these claims and their failures, if I may. The first argument from immunity supporters says:

> The President has the authority to decide whether or not telecoms should be granted immunity.

That is the first argument. The President has that implicit authority. But the facts in this case belong in the courts. The judiciary should be allowed to determine whether the President has exceeded his powers by obtaining from the telecoms wholesale access to the domestic communications of millions of ordinary Americans.

Whatever the arguments may be, let us assume for a second they are going to make this argument. Well, you can make an argument. Where is the place you make that argument? Here in the legislative body or in the courts? I think the simple answer is, if you have been to law school for a week, the courts.

We are a government of three parts, coequal: executive, legislative, and judicial. The executive branch says: I have the right to do this. The Congress can debate and certainly discuss it. But only in the courts can we determine the constitutionality of that action.

Neither this body nor the other that comprise the legislative branch are charged with the responsibility of determining constitutionality. When Congress passes a law, the courts decide whether it is constitutional. When the President acts, the courts decide whether it is constitutional. The executive branch does not decide whether we have acted constitutionally, and we do not decide whether the President has acted constitutionally. That is what the courts are for. This is basic 101 stuff. This is basic stuff. You go to the courts to determine this question. And yet if we pass retroactive immunity—gone.

That is a great precedent. That is what future Congresses will look to, when deciding when some future President overreaches: What did the previous Congresses do? And you will hear the argument in this Chamber years hence: Well, back in 2008, when confronted with that question, the Senate said that, frankly, the courts had no business with that, in effect, sanctioning what had occurred.

How else can you read this but as a sanction? If a majority of Senators here decides that retroactive immunity is warranted, what other conclusion can history draw from that, except we agreed with the President that he had the right to do what he did, and we will never know the legal answer to the question. We will deprive the courts of the opportunity to decide it.

We are overstepping our bounds incredibly by doing this, and hence the reason for the first time in my more than a quarter century in this body I am engaging in extended debate, because this is that important.

To allow a President, any President of any party, to mandate or require a public or private entity to invade the privacy of Americans to the extent that has occurred here, one of the most massive alleged violations of privacy in

history, and not challenge it and have the courts determine the legality or illegality of it, is an incredible precedent of historic proportions. It is not a small vote tomorrow. It is not a minor issue. It is about as important and as basic and as fundamental as anything we can ever do.

Remember that the administration's original immunity proposal protected everyone. That is what they wanted. And executive immunity is not in this bill only because JAY ROCKEFELLER and KIT BOND and the other members of the committee said No. But do not forget that is what they wanted. The administration came to the committee, and said: We want you to grant immunity to everyone—the executive branch, the telecoms, Justice Department, anyone else involved.

The committee turned them down. But they asked for it. They asked for it. And that has to be a part of this debate and discussion. It is not irrelevant. It is not insignificant that the President of the United States asked the Intelligence Committee of the Senate to grant them and everyone else involved in this issue total immunity. What more do you need to know about what the motives are? How much more do you need to find out? The origin of immunity tells us a great deal about what is at stake here. It is self-preservation.

I have my own opinions about warrantless surveillance, about what went on. But my opinions should not bear the weight of law. I think what these companies did was wrong. But I would be a fool to stand before you this evening and say I have the right to make that determination. But they should have not the right, either, to decide if it was legal. And that is what we are doing, in effect, by granting retroactive immunity.

The second argument is that only foreign communications are targeted.

Immunity supporters claim that only foreign communications were targeted, not Americans' domestic calls. But the fact is that clear firsthand evidence authenticated by these corporations in court contradicts that claim. ''Splitters'' at AT&T's Internet hub in San Francisco diverted into a secret room controlled by the NSA every e-mail, every text message, every phone call, foreign or domestic, carried over the massive fiber optic lines of 16 separate companies for over 5 years.

Third, the Senate Intelligence Committee has preserved the role of the judiciary so there is ample oversight. But the fact is, the role would be empty. The Intelligence version of the bill before us would require the cases to be dismissed at a word from the Attorney General. The central legal questions raised by these cases would never be heard. The cases would never be fully closed. We would never really truly know what happened in these matters. So from a mere word of the Attorney General, that is the end of it.

The fourth argument we have been hearing over the last number of months: A lack of immunity would compromise future cooperation between the U.S. Government and the telecom industry. But remember: Since the 1970s the Foreign Intelligence Surveillance Act has compelled telecoms to cooperate with warranted surveillance, and it has immunized them entirely. They don't have a choice, in effect. If you are compelled by a warrant to turn over the evidence, you don't have the choice of cooperating or not. The idea that the companies will say: We are just not going to share that information with you—you don't have that luxury. When a court order comes and says: Turn over the evidence, you have to turn it over. But, of course, the companies say: We don't want to because we will end up with a lot of lawsuits. To handle that very legitimate issue raised initially by AT&T, which was part of drafting FISA in 1978, we said: Don't worry about that. We will immunize you so there won't be any lawsuits that can be brought against you for doing what you are compelled to do by court order and a warrant.

So the argument that somehow we won't be cooperative with you is just on its face factually wrong. You don't have the choice not to cooperate. What we do grant to you with that warrant is the fact that you cannot be sued, which is a legitimate request to make.

That is not, of course, what happened here. The decision was made to turn over the evidence without a warrant, without a court order.

I pointed out before that according to the Washington Post, since 1978 there have been over 18,700 court orders requested of the FISA Court, and only 5 have been rejected in 30 years; 18,700-plus cases before the court, that secret, private Federal court, and in 99.9 percent of the cases, they have been approved. Only five have been rejected. But when you are receiving a court order, when the warrant arrives and you are complying with it, as you are required, you also receive immunity from legal prosecution or from lawsuits. So the argument somehow that these companies won't be as cooperative, if it weren't so sad, would almost be amusing.

This was a pay deal, by the way. It wasn't just patriotic duty. There was a cost involved. We were writing checks to the telecommunications industry. For whatever reason, when the Government stopped paying the checks to the telecom industry, these great patriotic institutions decided to stop the surveillance. Were they under a court order, had there been a warrant insisting upon their compliance, they wouldn't have the luxury of deciding not to comply. Only under this fact situation we are debating this evening would these corporations have any ability to all of a sudden stop complying with the law or complying with the request. So the irony of the argument is that the reverse is actually true. If you don't have a warrant and a court order, it is less likely you are apt to get that continual cooperation from these very companies that can provide the information we need to keep us more secure.

The fifth argument immunity supporters make is that telecoms can't defend themselves because of the state secrets provision. I made this case a while ago, but let me repeat it. The fact is that Federal district court Judge Vaughn Walker has already ruled that the issue can go to trial without putting state secrets in jeopardy. Judge Walker pointed out that the existence of the warrantless surveillance program is hardly a secret at all.

I will quote him again. He said:

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

So the argument that they can't defend themselves without exposing state secrets has already been debunked.

The sixth argument that is made by those who support immunity is that defendants are already shielded by common law principles. This is an interesting one. Immunity supporters claim that telecoms are protected by common law principles, but the fact is that common law immunities do not trump specific legal duties imposed by statute such as the specific duties Congress has long imposed on telecoms to protect customer privacy and records.

In the pending case against AT&T, the judge already has ruled unequivocally that ''AT&T cannot seriously contend that a reasonable entity in its position could have believed that the alleged domestic dragnet was legal.'' Even so, the communications company defendants can and should have the opportunity to present these defenses to the courts and the courts—not the Congress preemptively—should decide whether they are sufficient.

The seventh argument that is being made by the supporters of immunity is that information leaks may compromise state secrets and national security. I have heard this argument over and over and over again. The fact is, our Federal court system, in decade after decade of dealing with delicate national security matters, has built up the expertise it takes to secure that information behind closed doors. If we are still concerned about national security being threatened as a result of these cases, we can simply get the principals a security clearance.

We can be increasingly confident that these cases will not expose state secrets or intelligence sources, because after the extensive litigation that has already taken place at both the district court and circuit court level, no sensitive information has been leaked.

This is a red herring issue. It is one that they are going to fall back on over and over again. But it is no secret about what has been going on. It has been widely reported. The only thing we are talking about is methods and means. Yet, over the decades, our Federal courts, in very sensitive matters,

have protected that information. So this is a phony argument and ought not to carry the day.

The eighth argument from those who support immunity: A lack of immunity will harm the telecom companies. This is not unlike Admiral McConnell's argument about finances. There will be reputational damage to the telecom industry. The fact is, there is no evidence that this litigation has reduced or will reduce the defendant companies' bottom lines or customer base. These companies can only be harmed if they have done something wrong. If they have not, they have nothing to worry about. But the suggestion somehow that we should not go forward because your reputation may be damaged is an insulting argument. It is offensive to suggest that we should harm the people's right to privacy because to prevent some reputational damage—they should be embarrassed to make that argument. After all, there is nothing to be damaged if you have done nothing wrong. If you have done something wrong, then, of course, there will be some damage. And why shouldn't there be, if you have done wrong? The courts are the ones to properly determine that.

The ninth argument: The magnitude of liability will bankrupt the telecoms. I have addressed this already, but I will briefly respond to it as well.

As we have seen, huge corporations could only be wiped out by most enormous penalties and also the most unlikely penalties that could be imposed. It would take several leaps to assume that the telecoms would lose and that they will be slapped with huge judgments. But on another level, immunity supporters are staking their claim on a dangerous principle, that a suit can be stopped solely on the basis of how much the defendant stands to lose. If we accept that premise, we could conceive of a corporation so wealthy, so integral to our economy, that its riches place it outside of the law altogether. That is a deeply flawed argument.

We see that none of these arguments for immunity stand. There is absolutely no reason to halt the legal process and to bar the courthouse door.

I think it is important at this moment to share with those who may be following this discussion, how we got to this point. How did we find out about all of this? I said earlier that we would not be here debating this this evening had it not been for a whistleblower, had it not been for reports in the media about what was going on, that a 5-year violation of privacy rights would have now turned into a 7- or 8-year violation, unabated, unstopped—every phone conversation, fax, e-mail being literally swept up, from millions and millions of people.

But we got knowledge of this because of a gentleman by the name of Mark Klein who was a former AT&T telecommunications technician who came forward to provide evidence of the company's collaboration with the NSA. Mark Klein is a remarkable individual, a person of knowledge and ability when it comes to these matters. Let me read from Mark Klein's testimony because I think it is important. This is all from him. These are not my words. These are words from Mark Klein, a person who worked at AT&T for more than 20 years as an employee and a technician who came forward to provide this information. Let me read his comments, if I may, and put them into this debate.

For about 5 years, the Bush administration's National Security Agency, with the help of the country's largest telecommunications companies, has been collecting your e-mail, accumulating information on your Web browser, and gathering details about your Internet activity, all without warrants and in violation of the U.S. Constitution and several Federal and State laws. Even after the program was exposed by the New York Times in December of 2005, the President and other government officials consistently defended the NSA's activities, insisting that the NSA only collects communications into or from the United States where one party to the communication is someone they believe to be a member of al Qaeda or an associated terrorist organization. But these claims are not true. I know they are not true, because I have firsthand knowledge of the clandestine collaboration between one giant telecommunications company and the NSA to facilitate the most comprehensive spying program in history. I have seen the NSA's vacuum cleaner surveillance infrastructure with my own eyes. It is a vast government-sponsored, warrantless spying program.

For over 22 years, I worked as a technician for AT&T. While working in San Francisco in 2002, I learned that a management level technician, with AT&T's knowledge, had been cleared by the NSA to work on a special but secret project, the installation and maintenance of Internet equipment in a newly constructed secure room in AT&T's central office in San Francisco. Other than the NSA-cleared technician, no employees were allowed in that room.

In October of 2003, I was transferred to that office and was in particular assigned to oversee AT&T operations. As part of my duties, I was required to connect circuits carrying data to optical splitters which made a copy of the light signal. But the splitters weakened the light signal causing problems I had to troubleshoot. After examining engineering documents given to the technicians which showed the connections to the splitters, I discovered that there they were hard wired to the secret room. In short, an exact copy of all traffic that flowed through critical AT&T cables—e-mails, documents, pictures, Web browsing, voiceover Internet phone conversations—everything was being diverted to equipment inside the secret room. In addition, the documents revealed the technological gear used in their secret project, including a highly sophisticated search component capable of quickly sifting through huge amounts of digital data, including text, voice, and images in real-time, according to preprogrammed criteria. It is important to understand that the Internet links which were connected to the splitter contained not just foreign communications, but vast amounts of domestic trafficking all mixed together.

Furthermore, the splitter has no selective abilities. It is just a dumb device which copies everything to the secret room. And the links going through the splitter are AT&T's physical connections to many other Internet providers; e.g., Sprint, Qwest, Global Crossing Cable and Wireless, and the critical west coast exchange point known as Mae West. Since these networks are interconnected, the government's surveillance affects not only AT&T customers, but everyone else—millions of Americans.

I repeat again, I am reading the testimony of Mark Klein who was the whistleblower who revealed this 5-year-long warrantless surveillance program. Mark Klein goes on:

I also discovered in my conversations with other technicians that other secret rooms were established in Seattle, San Jose, Los Angeles and San Diego. One of the documents I obtained also mentioned Atlanta, and the clear inference and the logic of this setup and the language of the documents is that there are other such rooms across the country to complete the coverage—possibly 15 to 20 more. So when reports of the government's extensive wiretapping program surfaced in December of 2005, after I had left AT&T, I realized two things. First, that I had been a witness to a massive spying effort that violated the rights of millions of Americans; and second, that the government was not telling the public the truth about the extent of their unconstitutional invasion of privacy.

In the spring of 2006, I became a witness for the Electronic Frontier Foundation's lawsuit against AT&T. The New York Times on April 13 of 2006 reported that four independent technical experts who examined the AT&T documents all said that the documents showed that AT&T had an agreement with the Federal Government to systematically gather information flowing on the Internet.

That is the testimony of Mark Klein.

I think it is important as well to share with my colleagues the testimony of Brian Ried, currently the Director of Engineering and Technical Operations at Internet Systems Consortium, a nonprofit organization devoted to supporting a nonproprietary Internet. This is a person of extensive knowledge. I am going to read his testimony about the technical arrangements. This is clearly above my pay grade to understand all of this with this gray head of hair I have, but to those who are listening or watching any of this, this will explain how this actually worked. So I am going to read this as if I actually know what I am talking about. So let me read exactly the words of Brian Ried, the statement of telecommunications expert Brian Ried, an AT&T whistleblower, about Mark Klein's revelations.

I am a telecommunications and data networking expert.

That is again Brian Ried speaking here who has been involved in the development of several critical Internet technologies.

I was a professor of electrical engineering at Stanford University and of computer sciences at Carnegie Melon University West. I have carefully reviewed the AT&T authenticated documents and declaration provided by Mark Klein and the public redacted version of the expert declaration of Jay Scott Marcus, both filed in the Hepting v. AT&T litigation. Combining the information contained in those declarations and documents with my extensive knowledge of the international telecommunications infrastructure and the technology regularly used for lawful surveillance pursuant to warrants

and court orders, I believe Mr. Klein's evidence is strongly supportive of widespread, untargeted surveillance of ordinary people, both AT&T customers and others.

The AT&T documents describe a technological setup of the AT&T facility in San Francisco. This setup is particularly well suited to wholesale dragnet surveillance of all communications passing through the facility, whether international or domestic. These documents describe how the fiberoptic cables were cut and splitters installed at the cut point. Fiberoptic splitters work just like ordinary TV splitters. One cable feeds in and two cables feed out. Both cables carry a copy of absolutely everything that is sent, and if the second cable is connected to a monitoring station, that station sees all traffic going over the cable.

Mr. Klein stated that the second cable was routed into a room at the facility which access was restricted to AT&T employees having clearances from the National Security Agency. The documents indicate that similar facilities were being installed in Seattle, San Jose, Los Angeles, and San Diego. The documents also reference a somewhat similar facility in Atlanta. This infrastructure is capable of monitoring all traffic passing through the AT&T facility, some of it not even from AT&T customers, whether voice or data or fax, international, or domestic. The most likely use of this infrastructure is wholesale, untargeted surveillance of ordinary Americans at the behest of the NSA. NSA involvement undermines arguments that the facility is intended for use by AT&T in protecting its own network operations.

This infrastructure is not limited to, nor would it be especially efficient for targeted surveillance or even an untargeted surveillance aimed at communications where one of the ends is located outside of the United States. It is also not reasonably aimed at supporting AT&T operations and security procedures. There are 3 main reasons. The technological infrastructure is far more powerful and expansive than that needed to do targeted surveillance or surveillance aimed at only international or one end foreign communications. For example, it includes a Narus 6400, a computer that can simultaneously analyze huge amounts of information based on rules provided by the machine operator, analyze the content of messages and other information—not just headers or routing information—conduct the analysis in real-time rather than after a delay, correlate information from multiple sources, multiple formats, over many protocols and through different periods of time in that analysis.

The documents describe a secret private backbone network separate from the public network where normal AT&T customer traffic is carried and transmitted. A separate backbone network would not be required for transmission of the smaller amounts of data captured by a targeted surveillance. You don't need that magnitude of transport capacity if you are doing targeted surveillance.

The San Francisco facility is not located near an entry-exit point for international communications that happened to be transmitted through the United States either through under sea cable or via satellite. As a result, it would not be a sensible place to locate aimed at simply monitoring traffic to or from foreign countries.

I apologize for reading these technical documents, but I think they shed some light. We are talking about very knowledgeable, expert people describing technically what was done, the magnitude of it, the capacity of it, the effort that was made, obviously, to see to it, as Mr. Klein calls it, a dumb machine that would not discriminate between information that might only be used to protect us from al-Qaida, and wholesale invasion of privacy.

But putting aside all that—had they sought a warrant and a court order, as they should have done, then arguably AT&T and others involved would be protected today and be immunized against lawsuits, if it had been done under the FISA legislation. The fact that the administration decided to totally disregard 30 years of legislation, of working courts that have provided, in over 18,700 examples, approval of such requests, rejecting only 5, shows an arrogance that shouldn't be ignored.

So again, tomorrow when the votes occur on cloture and the votes occur on these amendments, we will may sanctioning this activity—setting the unprecedented precedent of a Congress actually providing immunity from the courts even examining whether warrantless spying is legal and right. Hence, in future years, this will be cited, I am confident, by those who want to undermine the FISA Courts, deprive the courts the opportunity to make sure there is a justification, an argument, a legal basis for granting these warrants. The argument will be made: You don't need the courts, because back in 2008, telecommunications companies, at the mere request of a President, were able to go forward and spend more than 5 years invading the privacy of millions of Americans, and when the Senate had an opportunity to sanction that activity, it decided to do so, rather than allow the court to determine whether that action was legal.

The word of the Senate should be a valued—I can hear the argument years hence. They listened to the debates, they listened to that fellow DODD get up and talk for hours about the issue of immunity and why it shouldn't be granted retroactively and they turned him down. That will be the precedent cited when faced with similar allegations involving future administrations that may decide that financial information, medical information, highly private, personal, family information may be the subject of unwarranted surveillance to allegedly protect our country and keeping us safe. If that is the case, I am confident this debate and these votes will be cited as a justification for allowing that kind of activity to go forward without receiving the legal authority to do so. We will have denied the courts the opportunity to decide whether this activity that was the most serious invasion of privacy ever maybe in our country was legal or illegal. By granting retroactive immunity, we will have made a decision to deprive the courts of that responsibility.

Ultimately, all I am asking for is a fair fight. To reject immunity would mean to grab hold of the closest thread of lawlessness we have at hand and to pull until the whole garment unravels. But ensuring a day in court is not the same as ensuring a verdict. When that day comes, I have absolutely no investment in the verdict, either way. It may be the Federal Government broke the law when they asked the telecoms to spy but that the telecoms' response was an innocent one. It may be the Government was within the law and that the telecoms broke it. Maybe they both broke the law. Maybe neither did.

But just as it would be absurd to declare the telecoms clearly guilty, it is equally absurd, I would argue, to close the case in Congress without a decision. That is what immunity does: It closes the case without a decision. Throughout this debate, the telecoms' advocates have needed to show not just that they are right but that they are so right and that we are so far beyond the pale that we can shut down the argument right here, today. That is a burden they have clearly not met, and they cannot expect to meet it when a huge majority of Senators who will make the decision have not even seen the secret documents that are supposed to prove the case for retroactive immunity.

My trust is in the courts, in the cases argued openly, in the judges who preside over them, and in the juries of American citizens who decide them. They should be our pride, not our embarrassment, and they deserve to do their jobs.

As complex, as diverse, as relentless as the assault on the rule of law has been, our answer to it is a simple one. Far more than any President's lawlessness, the American way of justice remains deeply rooted in our character; that no President can disturb or should be allowed to do so.

So I am full of hope. Even on this dark evening, I have faith that we can unite security and justice because we have already done it for 30 years. My father, Senator Tom Dodd, was the number two American prosecutor at the famous Nuremburg trials, which may have something to do with the passion I feel about this issue—the rule of law.

I have never forgotten the example he and Justice Robert Jackson and others set at Nuremberg more than 60 years ago.

As Justice Robert Jackson said in the opening statement at Nuremberg—in fact, I have written it down, but I memorized this years and years ago. Robert Jackson's opening statement, speaking to the court, talking about the Soviet Union, the British, the French, and America, he made the following argument:

> That four great nations, flushed with victory and stung with injury, stay the hand of vengeance and voluntarily submitting their captive enemies to the judgment of the law is one of the most significant tributes that power ever paid to reason.

That is a great sentence when you think of it. Here we are staying the hands of vengeance and power, paying tribute to reason. At Nuremberg, there were 21 initial defendants. Madam President, 55 million people had died, 6

million Jews were incinerated, and 5 million others had the same fate befall them because of their politics, religion, or sexual orientation. These were some of the greatest crimes in recorded history. Winston Churchill wanted to summarily execute every one of them. The Soviets wanted a show trial for a week and then to kill them all. Robert Jackson, Harry Truman, Henry Stinton, the Secretary of War in Roosevelt's Cabinet—this handful of people said: The United States is different. We are going to do something no one else has ever done before. We are going to give these defendants, as great violators of human rights as they are, a day in court. It was unprecedented.

Here they are, the war still raging in the Pacific, gathering in Nuremberg, Germany, which had 30,000 people buried in the rubble of the city. Prosecutors, judges, and lawyers for these individuals gathered together and gave them a day in court that went on for a year.

And the United States gained the moral high ground. Never before in history had the victors given those guilty of the worse atrocities imaginable a day in court.

I cannot believe this country, at this hour, would walk away from the rule of law when we stood for it so proudly in the 20th century. In fact, that experience at Nuremberg gave birth to a half-century of moral authority. It paved the way for the Marshall Plan and for the international structures that gave the world relative peace for more than a half century. For so many years, both Republican and Democratic administrations stood up for them and defended them. The international criminal courts and others—none of these institutions would have existed were it not for the United States leading.

Today, when we find ourselves at this moment in this body—of all places—walking away from the rule of law, I think it is a dark hour. Again, my hope is that by tomorrow reason will prevail here, and we will arrive at a different decision and reject this idea that retroactive immunity is warranted.

What is the tribute that power owes to reason? That when America goes to war, it doesn't fight for land or for treasure or for dominance but for a transcendent idea—the idea that laws should rule and not men; the idea that the Constitution does not get suspended for vengeance; the idea that this great Nation should never tailor its eternal principles to the conflict of the moment because, if we did, we would be walking in the footsteps of the enemies we despised.

The tribute that power owes to reason: More than ever before, that tribute is due today. If we cannot find the strength to pay it, we will have to answer for it.

There is a famous military recruiting poster that comes to mind. A man is sitting in an easy chair with his son and daughter on his lap, in some future after the war has ended. His daughter asks him: Daddy, what did you do in the war?

His face is shocked and shamed, because he knows he did nothing.

My daughters, Grace and Christina, are 3 and 6 years old. They are growing up in a time of two great conflicts: one between our Nation and enemies, and another between what is best and worst in our American soul. Someday soon I know I am going to hear the question: What did you do?

I want more than anything else to give the right answer to that question. That question is coming from every single one of us in this body. Every single one of us will be judged by a jury from whom there is no hiding: our sons and daughters and grandchildren. Someday soon they will read in their textbooks the story of a great nation, one that threw down tyrants and oppressors for two centuries; one that rid the world of Naziism and Soviet communism; one that proved that great strength can serve great virtue, that right can truly make might. Then they will read how, in the early years of the 21st century, that Nation lost its way.

We don't have the power to strike that chapter. We cannot go back. We cannot undestroy the CIA's interrogation tapes. We cannot unpass the Military Commissions Act. We cannot unspeak Alberto Gonzales' disgraceful testimony. We cannot untorture innocent people. And, perhaps, sadly, shamefully, we cannot stop retroactive immunity. We cannot undo all that has been done for the last 6 years for the cause of lawlessness and fear. We cannot blot out that chapter. But we can begin the next one, even today.

Let the first words read: Finally, in February 2008, the Senate said: Enough is enough.

I implore my colleagues to write it with me. I implore my colleagues to vote against retroactive immunity. I implore them to reject it, and if we fail to do that, to vote against cloture.

I have shared my thoughts and views at some length now. But there are others who have spoken eloquently on this subject. I think their words deserve to be heard because they state far more eloquently than I could the importance of all of this and why this is such a compelling case and deserving of our attention. Let me share a few of these words from the New York Times:

Even by the dismal standards of what passes for a national debate on intelligence and civil liberties, last week was a really bad week.

The Senate debated a bill that would make needed updates to the Foreign Intelligence Surveillance Act—while needlessly expanding the president's ability to spy on Americans without a warrant and covering up the unlawful spying that President Bush ordered after 9/11.

The Democrat who heads the Senate Intelligence Committee, John Rockefeller of West Virginia, led the way in killing amendments that would have strengthened requirements for warrants and raised the possibility of at least some accountability for past wrongdoing. Republicans declaimed about protecting America from terrorists—as if anyone was arguing the opposite—and had little to say about protecting Americans' rights.

We saw a ray of hope when the head of the Central Intelligence Agency conceded—finally—that waterboarding was probably illegal. But his boss, the 'director of national intelligence, insisted it was legal when done to real bad guys. And Vice President Dick Cheney—surprise!—made it clear that President Bush would authorize waterboarding whenever he wanted.

The Catch–22 metaphor is seriously overused, but consider this: Attorney General Michael Mukasey told Congress there would be no criminal investigation into waterboarding. He said the Justice Department decided waterboarding was legal (remember the torture memo?) and told the C.I.A. that.

So, according to Mukaseyan logic, the Justice Department cannot investigate those who may have committed torture, because the Justice Department said it was O.K. and Justice cannot be expected to investigate itself.

As it was with torture, so it was with wiretaps.

After the 2001 terrorist attacks, the President decided to ignore the Foreign Intelligence Surveillance Act, or FISA, and authorized wiretaps without a warrant on electronic communications between people in the United States and people abroad. Administration lawyers ginned up a legal justification and then asked communications companies for vast amounts of data.

According to Mr. Rockefeller, the companies were ''sent letters, all of which stated that the relevant activities had been authorized by the President'' and that the Attorney General—then John Ashcroft—decided the activity was lawful. The legal justification remains secret, but we suspect it was based on the finely developed theory that the government cannot be sued for doing so if they were obeying a warrant—or a certification from the Attorney General that a warrant was not needed—and all federal statutes were being obeyed.

When Mr. Bush started his spying program, FISA allowed warrantless eavesdropping for up to a year if the president certified that it was directed at a foreign power, or the agent of a foreign power, and there was no real chance that communications involving United States citizens or residents would be caught up. As we now know, the surveillance included Americans and there was no ''foreign power'' involved.

The law then, and now, also requires the attorney general to certify ''in writing under oath'' that the surveillance is legal under FISA, not some fanciful theory of executive power. He is required to inform Congress 30 days in advance, and then periodically report to the House and Senate intelligence panels.

Congress was certainly not informed, and if Mr. Ashcroft or later Alberto Gonzales certified anything under oath, it's a mystery to whom and when. The eavesdropping went on for four years and would probably still be going on if The Times had not revealed it.

So what were the telecommunications companies told? Since the administration is not going to investigate this either, civil actions are the only alternative.

The telecoms, which are facing about 40 pending lawsuits, believe they are protected by a separate law that says companies that give communications data to the government cannot be sued for doing so if they were obeying a warrant—or a certification from the attorney general that a warrant was not needed—and all federal statutes were being obeyed.

To defend themselves, the companies must be able to show they cooperated and produce that certification. But the White House does

not want the public to see the documents, since it seems clear that the legal requirements were not met. It is invoking the state secrets privilege—saying that as a matter of national security, it will not confirm that any company cooperated with the wiretapping or permit the documents to be disclosed in court.

So Mr. Rockefeller and other senators want to give the companies immunity even if the administration never admits they were involved. This is short-circuiting the legal system. If it is approved, we will then have to hope that the next president will be willing to reveal the truth.

Mr. Rockefeller argues that companies might balk at future warrantless spying programs. Imagine that!

This whole nightmare was started by Mr. Bush's decision to spy without warrants—not because they are hard to get, but because he decided he was above the law. Discouraging that would be a service to the nation.

This debate is not about whether the United States is going to spy on Al Qaeda, it is about whether it is going to destroy its democratic principles in doing so. Senators who care about that should vote against immunity.

Madam President, if I can, I will read from the USA Today, which also had a good editorial on this subject matter, dated October 22, 2007. It is entitled, ''Our View On Your Phone Records: Immunity Demand For Telecoms Raises Questions.''

As history shows, mass snooping can sweep up innocent citizens.

Anyone who has ever watched TV's Law & Order: SVU knows how easy it is for police to get the bad guys' LUDs—''local usage details,'' better known as telephone calling records. They only need to get a prosecutor to sign a subpoena.

Eavesdropping on calls or reading e-mails is a bit tougher. A warrant must come from a judge, and stronger evidence is needed. Even so, it is an efficient process that serves law enforcement's needs while guarding against arbitrary intrusions into the privacy of innocent people.

But whether those protections still exist in national security cases is very much in doubt.

Since Sept. 11, 2001, the Bush administration has repeatedly bypassed the special court set up to preserve balance. Now, with Congress threatening to restore some level of protection, the administration is insisting on legal immunity for telecommunications companies that might have turned over records improperly. Last week, a key Senate committee agreed.

The request alone is enough to raise suspicion, particularly given the nation's history.

In the 1960s and '70s when law enforcement and spy agencies launched mass snooping against U.S. citizens, some of the data ended up being used for nefarious purposes, such as IRS tax probes, that had nothing to do with protecting the nation.

That is the danger when an administration can tap into phone records without court oversight, and it is what's at issue now.

The administration has repeatedly bypassed the special national security court, arguing that the urgency of the war on terrorism justified its actions.

In one particularly troubling intrusion, the National Security Agency (NSA), a Pentagon-run spy agency, built a database—with cooperation from some telecom companies—that includes America's domestic calls. The extent of the program remains hidden, one reason many in Congress are reluctant to grab the company's immunity.

According to the account of one former CEO, the NSA foray has already led to abuse. When Qwest, one of the nation's largest telecom companies, refused to go along with the NSA program—because Qwest lawyers considered it illegal—the NSA allegedly retaliated by denying Qwest other lucrative government contracts. Further, the requests to participate, according to former Qwest chief executive Joseph Nacchio, came six months before the 9/11 attacks. Nacchio's allegations are in court findings unsealed this month that are part of his battle over a conviction of insider trading.

If the Senate measure becomes law, telecom companies will get immunity from nearly 40 lawsuits without the public knowing what the companies or the government did. Never mind that six of the lawsuits were brought by state officials—from New Jersey to Missouri—concerned about possible violation of citizens' privacy.

There might be some valid reason to grant immunity. The Senate committee agreed after seeing details. But even if there is, the companies should be compelled to tell the public the precise nature and reach of the program, and the program should be put firmly under court review.

The Senate measure also would place minimal court supervision over future surveillance ventures. A far more sensible House Democratic measure would give the Foreign Intelligence Surveillance Court a greater role.

That system works well, even in emergencies. In the harrowing minutes after the Pentagon was attacked on 9/11, the court's chief judge, stuck in his car, granted five surveillance warrants from his cell phone.

Speed, obviously, is important. Nevertheless, it can be achieved without discarding protections that long ago proved their worth.

The Dallas Morning News had a good article as well on Friday, October 19, of last year, entitled ''Beck and Call: Verizon too eager to surrender phone records'':

Verizon's willingness to turn over customer telephone records when the government asks—even though investigators often make such requests without a court order—is a troubling practice.

The company may be motivated by a desire to help—or to avoid government confrontation. But Verizon's approach, disclosed in a letter to Congress this week, is the wrong way to go about this.

The burden of proof rests with the federal government to prove its need for the records. Except in rare instances, investigators must take their records requests to a judge who then can determine whether to issue a warrant. The Constitution intends just that, in language that fairly balances privacy fears and law enforcement.

Yet the Bush administration insists on continuing to push the post-9/11 civil liberties vs. security debate in the wrong direction. Because telecom companies that have complied with its requests now face huge lawsuits from citizens-rights groups, the administration wants a law to grant immune businesses sued for disclosing information without court authorization.

Congress is right to look at the immunity proposal with a skeptical eye, especially since the administration has been reluctant to explain details of its controversial surveillance program to lawmakers. The law would further erode the privacy firewall and remove another layer of checks and balances.

The phone companies, meanwhile, have refused to tell relevant congressional committees whether they participated in the National Security Agency's domestic eavesdropping program. Their silence is based on concerns that they might illegally divulge classified information if they talk to Congress in too much detail.

Yet Congress and the courts have legitimate oversight roles in issues of privacy and national security. Due process is necessary to promote transparency and accountability in a democracy. These are foundational principles, even in the more dangerous post-9/11 world.

There is a further piece I think is worthy of reading, written in December of 2005 by a former majority leader of this great body, Tom Daschle. It's called ''Power We Didn't Grab.'' Tom Daschle was deeply involved, I should point out, in the negotiations dealing with many of these matters, particularly in the wake of the resolution that was drafted granting the President the authority to go after al-Qaida in Afghanistan. Alberto Gonzales later argued that with the adoption of that resolution, Congress was granting the President authority to conduct the warrantless surveillance that is the subject of our discussion this evening.

That resolution was the subject of some negotiation over several days before it was presented for a final vote in this body. So it is worthy of consideration that Tom Daschle would write a piece in the Washington Post when Alberto Gonzales made the argument that the President's authority to require the phone companies to comply with his request without a court order was, in fact, never the subject of those negotiations.

I will read Tom Daschle's words on December 23, 2005:

In the face of mounting questions about news stories saying that President Bush approved a program to wiretap American citizens without getting warrants, the White House argues that Congress granted it authority for such surveillance in the 2001 legislation authorizing the use of force against al Qaeda. On Tuesday, Vice President Cheney said the president ''was granted authority by the Congress to use all means necessary to take on the terrorists, and that's what we've done.''

As Senate majority leader at the time, I helped negotiate that law with the White House counsel's office over two harried days. I can state categorically that the subject of warrantless wiretaps of American citizens never came up. I did not and never would have supported giving authority to the president for such wiretaps. I am also confident that the 98 senators who voted in favor of authorization of force against al Qaeda did not believe that they were also voting for warrantless domestic surveillance.

On the evening of Sept. 12, 2001, the White House proposed that Congress authorize the use of military force to ''deter and pre-empt any future acts of terrorism or aggression against the United States.'' Believing the scope of this language was too broad and ill defined, Congress chose instead, on Sept. 14, to authorize ''all necessary and appropriate force against those nations, organizations or persons [the president] determines planned, authorized, committed, or aided'' the attacks of Sept. 11. With this language, Congress denied the president the more expansive authority he sought and insisted that his authority be used specifically against Osama bin Laden and al Qaeda.

Just before the Senate acted on this compromise resolution, the White House sought one last change. Literally minutes before the Senate cast its vote, the administration sought to add the words ''in the United States and'' after ''appropriate force'' in the agreed-upon text. This last-minute change would have given the president broad authority to exercise expansive powers not just overseas—where we all understand he wanted authority to act—but right here in the United States, potentially against American citizens. I could see no justification for Congress to accede to this extraordinary request for additional authority. I refused.

The shock and rage we all felt in the hours after the attack was still fresh. America was reeling for the first attack on our soil since Pearl Harbor. We suspected thousands had been killed, and many who worked in the World Trade Center and the Pentagon were not yet accounted for. Even so, a strong bipartisan majority could not agree to the administration's request for an unprecedented grant of authority.

The Bush administration now argues those powers were inherently contained in the resolution adopted by Congress—but at the time, the administration clearly felt they weren't or it wouldn't have tried to insert the additional language.

All Americans agreed that keeping our nation safe from terrorists demands aggressive and innovative tactics. This unity was reflected in the near-unanimous support for the original resolution and the Patriot Act in those harrowing days after Sept. 11. But there are right and wrong ways to defeat terrorists, and that is a distinction this administration has never seemed to accept. Instead of employing tactics that preserve Americans' freedoms and inspire the faith and confidence of the American people, the White House seems to have chosen methods that can only breed fear and suspicion.

If the stories in the media over the past week are accurate, the president has exercised authority that I do not believe is granted to him in the Constitution, and that I know is not granted to him in the law I helped negotiate with his counsel and that Congress approved in the days after Sept. 11. For that reason, the president should explain the specific legal justification for his authorization of these actions, Congress should fully investigate these actions and the president's justification for them, and the administration should cooperate fully with that investigation.

In the meantime, if the president believes the current legal architecture of our country is sufficient for the fight against terrorism, he should propose changes to our laws in the light of day.

That is how a great democracy operates. And that is how this great democracy will defeat terrorism.

Those were eloquent words from our former majority leader who was, as I said, deeply involved in the negotiations crafting the resolution that was adopted almost unanimously, allowing us to attack al-Qaida, to defeat them in Afghanistan. Regrettably, Osama bin Laden and too many of his operatives are still on the loose. But that language gave the President the authority to act against them. He specifically wanted more authority at home. The majority leader and those who worked with him rejected that argument and that resolution adopted in 2001, 48 hours after the attack, specifically excluded the kind of activity that Alberto Gonzales and Vice President CHENEY claimed was granted in that resolution.

It was worthy to note the language of Senator Daschle during that debate.

I am going to read one more piece, if I may, again going back to October. It is ''Immunity for Telecoms May Set Bad Precedent, Legal Scholars Say. Retroactive problems could create problems in the future.'' This is by Dan Eggen. This was written in October of 2007.

I made the argument earlier that I was concerned about the precedent-setting nature of what we are doing. This evening I have been reaching back 30 years to language used by our predecessors in this Chamber, Republicans and Democrats, who were part of the Church Commission that crafted the FISA legislation and the language they used, which easily could have been written yesterday and describing the debate we are having these days. We are calling upon them to guide us as we make our decisions about how to proceed in this day's work with the different threats we face, but the threats our predecessors faced were not small threats—the Soviet Union, a nuclear holocaust, significant problems of surveillance. They had the courage and the wisdom to step back and to create a structure that allowed us to maintain that balance between security and liberty.

So it is important because I am concerned that at some future date that the votes tomorrow may give a strong precedent to those who have never liked the idea of Federal courts granting warrants to conduct surveillance but prefer this be done at the mere request of an American President.

I made the case that when the Framers fashioned this Republic of ours, had efficiency been their goal, they never would have established a written system that had so many inefficiencies in it. In fact, requiring the checks and balances of an executive, judicial, and legislative branch with all of the requirements that we insist upon make this system terribly inefficient in many ways. But the Founders of this Republic were not only concerned about what we did but how we did things. It is terribly important to be mindful of that in these debates. Clearly, we need to gather information, and we need to be able to do it in an expeditious fashion. But we also need to make sure that how we do that is not going to violate more than 220 years of history, of guaranteeing the rights and liberties of individual citizens.

Thirty years ago, a previous Senate found a way to do that with the establishment of the secret Federal courts. These courts are established by the Chief Justice of the United States, who appoints sitting Federal judges anonymously to serve on these courts. None of us ever get to know who they are. But as I pointed out earlier, even on 9/11, a cell phone one of these secret FISA judges was able to respond instantaneously to the request being made to conduct surveillance necessary in the minutes after 9/11.

So it is important not only what we do about today's problem but the message we send, the precedent we set for future Congresses when confronted in their day, as they will be, with challenges regarding the balance between security and liberty.

So this article, written by Dan Eggen, I think has value, talking about how retroactive protection could create problems in the future.

When previous Republican administrations were accused of illegality in the FBI and CIA spying abuses of the 1970s or the Iran Contra affair of the 1980s, Democrats in Congress launched investigations or pushed for legislative reforms.

But last week, faced with admissions by several telecommunication companies that they assisted the Bush administration in warrantless spying on Americans, leaders of the Senate Intelligence Committee took a much different tack, opposing legislation that would grant those companies retroactive immunity from prosecution or lawsuits.

The proposal marks the second time in recent years that Congress has moved toward providing legal immunity for past actions that may have been illegal. The Military Commissions Act, passed by the GOP-led Congress in September of 2006, provided retroactive immunity for CIA interrogators who could have been accused of war crimes for mistreating detainees.

Legal experts say the granting of such retroactive immunity by Congress is unusual, particularly in a case involving private companies. Congress, on only a few occasions, has given some form of immunity to law enforcement officers, intelligence officials, or others within the government, or to some of its contractors, experts said. In 2005, Congress also approved a law granting firearms manufacturers immunity from lawsuits by victims of gun violence.

''It's particularly unusual in the case of the telecoms, because you don't really know what you are immunizing,'' said Louis Fisher, a specialist in constitutional law with the Law Library of the Library of Congress. ''You don't know what you are cleaning up.''

As part of a surveillance package approved Thursday by the Senate Intelligence Committee, some telecommunications companies would be granted immunity from about 40 pending lawsuits that allege they violated Americans' privacy and constitutional rights by aiding a warrantless wireless surveillance program instituted after the September 11, 2001, attacks.

I might point out here—and I will digress for a second—that we heard earlier testimony that this program may have actually started prior to the attacks of 9/11. There has been testimony submitted in courts by one of the telecoms, Qwest's CEO, that in fact a request was made of them to actually provide warrantless surveillance in January of 2001, when the administration took office, long before the attacks of 9/11. So it seems to me that alone ought to be the subject of some inquiry.

We have all accepted the notion that immediately after 9/11, whether we liked it or not, it was understandable how in the emotions of the moment, that companies, at the request of an administration, even here an administration requesting warrantless surveillance, might have acted. Not that we

would agree or like it but most would understand it.

My objection, as I said earlier, is not that it went on but that it went on for the next 5 years and would still be ongoing were it not for the whistleblower and the reports in the media. But what is troubling to me is we are assuming this all began after 9/11. There may now be some evidence it began before 9/11, which would debunk a lot of arguments given on why we should grant retroactive immunity. I merely point this out because we read earlier in testimony here that suggested this might have been done earlier.

At any rate, I will continue from Mr. Eggen's article talking about the provision we are talking about here.

The provision is a key concession to the administration and the companies, which lobbied heavily for it.

Referring to the retroactive immunity.

Supporters argue the legislation is needed to avoid unfair punishment of private firms that took part in good-faith efforts to assist the government.

In arguing in favor of such protections earlier this month, President Bush said any legislation ''must grant liability protection to companies who are facing multibillion dollar lawsuits only because they are believed to have assisted in the efforts to defend our Nation following the 9/11 attacks.''

The head of the intelligence panel, Sen. John D. Rockefeller, made a similar argument after the bill was approved last week. ''The onus is on the administration, not the companies, to ensure that the request is on strong legal footing,'' he said.

Jeffrey H. Smith, a CIA general counsel during the Clinton administration who now represents private companies in the national security area, said the risk of litigation poses an unfair threat to government officials or others who have good reason to believe they are acting legally. He noted that many intelligence officers now feel obliged to carry liability insurance.

''It seems to me that it's manifestly unfair for the officers that conducted that program and the telecoms to now face prosecution or civil liability for carrying out what was on its face a totally lawful request on the part of the government,'' Smith said. ''It's not the same as Abu Ghraib or a CIA officer who beats someone during an interrogation.''

But civil liberties groups and many academics argue that Congress is allowing the government to cover up possible wrongdoing and is inappropriately interfering in disputes the courts should decide. The American Civil Liberties Union last campaigned against the proposed Senate legislation, saying in a news release Friday that ''the administration is trying to cover its tracks.''

Sen. Russell Feingold said in a statement last week that classified documents provided by the White House ''further demonstrate that the program was illegal and that there is no basis for granting retroactive immunity to those who allegedly cooperated.'' His office declined to elaborate on the records, which were reviewed by a Feingold staffer.

Retired Rear Adm. John Hutson, dean and president of the Franklin Pierce Law Center in Concord, N.H., said he is concerned about the precedent a new immunity provision might set.

The article quotes him.

''The unfortunate reality is that once you've done it, once you immunize interrogators or phone companies, then it's easy to do it again in another context. It seems to me that as a general rule retroactive immunity is not a good thing . . . It's essentially letting Congress handle something that should be handled by the Judiciary.''

These are, I think, very good articles that shed light on some of the important issues we need to be looking at.

Let me, if I can, go back and talk about the Church Commission. I think it is important because we are relying so heavily on the work they have done and the establishment in the immediate aftermath of the Church Commission of the FISA Courts. I have quoted from some of them earlier this evening, but I think it is worthwhile to go back and listen to their words. Again, I want you to know these words were written 30 years ago, but I think people can appreciate how timely the language is when you consider the debate we are having. It is hard not to wonder how these words weren't prepared less than 24 hours ago, in preparation for this debate. I think their warnings and admonitions have a timeliness to them that are worthy of including in this discussion at this moment. So let me quote from the Church report:

Americans have rightfully been concerned since before World War II about the dangers of hostile foreign agents likely to commit acts of espionage. Similarly, the violent acts of political terrorists can seriously endanger the rights of Americans. Carefully focused intelligence investigations can help prevent such acts.

But too often intelligence has lost its focus and domestic intelligence activities have invaded individual privacy and violated the rights of lawful assembly and political expression. Unless new and tighter controls are established by legislation, domestic intelligence activities threaten to undermine our democratic society and fundamentally alter its nature.

A tension between order and liberty is inevitable in any society. A government must protect its citizens from those bent on engaging in violence and criminal behavior or in espionage or other hostile foreign intelligence activity. Intelligence work has, at times, successfully prevented dangerous and abhorrent acts, such as bombings and foreign spying, and aided in the prosecution of those responsible for such acts.

But intelligence activity in the past decades has, all too often, exceeded the restraints on the exercise of governmental power which are imposed by our country's constitution, laws, and traditions.

We have seen segments of our government, in their attitudes and action, adopt tactics unworthy of a democracy, and occasionally reminiscent of the tactics of totalitarian regimes. We have seen a consistent pattern in which programs initiated with limited goals, such as preventing criminal violence or identifying foreign spies, were expanded to what witnesses characterized as ''vacuum cleaners,'' sweeping in information about lawful activities of American citizens.

That these abuses have adversely affected the constitutional rights of particular Americans is beyond question. But we believe the harm extends far beyond the citizens directly affected.

Personal privacy is protected because it is essential to liberty and the pursuit of happiness. Our constitution checks the power of government for the purpose of protecting the rights of individuals, in order that all our citizens my live in a free and decent society. Unlike totalitarian states, we do not believe that any government has a monopoly on truth.

When government infringes on these rights instead of nurturing and protecting them, the injury spreads far beyond the particular citizens targeted to untold number of other American citizens who may be intimidated.

Abuse thrives on secrecy. Obviously, public disclosure over matters such as the names of intelligence agents or the technological details of collection methods is inappropriate. But in the field of intelligence, secrecy has been extended to inhibit review of the basic programs and practices themselves.

Those within the executive branch and the Congress who would exercise their responsibilities wisely must be fully informed. The American people as well should know enough about intelligence activities to be able to apply its good sense to the underlying issues of policy and morality.

Knowledge is the key to control. Secrecy should no longer be allowed to shield the existence of constitutional, legal and moral problems from the security of all three branches of government or from the American people themselves.

Those are incredible words that could. None of us could say it more eloquently than our colleagues did 30 years ago.

I can't tell you all the names of the Republicans and Democratic Senators who wrote this language, but they came from all parts of the country. They were, many of them, veterans of World War II, had served in Korea. DAN INOUYE was here. I know that. Senator BYRD, whom I sit next to, was here. Senator TED KENNEDY was here. Senator TED STEVENS was here for those debates. Those are the Members I can think of off the top of my head who were probably Members back in 1978 when this was written. JOE BIDEN was here as part of that debate. PATRICK LEAHY was here in 1978. I think CARL LEVIN and JOHN WARNER had just arrived. I think they had been elected that year. I am not sure.

But these are wonderful Members who sat and realized we needed to set up that balance between security and liberty and gave us the FISA Courts, the Foreign Intelligence Surveillance Act. Tonight, as we consider whether to grant immunity to the telecom companies and close the door on determining the legality or illegality of their actions, I think these words have tremendous relevance. Every Member ought to take them and read them and think about them.

I hear the words of the President, and I am disappointed he said he would veto the bill if we strip immunity. I have listened to Senator MCCONNELL, my good friend from Kentucky, saying we have to adopt this because the President will veto the bill otherwise. That is not the basis upon which the Congress ought to act. I have rarely heard that argument made here. You can raise it, certainly, as a point, but the suggestion that Congress or this body ought to act differently because the President is going to veto something or threatens a veto is not the basis upon which we ought to make decisions, particularly when it comes to

matters involving the rule of law and the Constitution of the United States.

Those issues of the Constitution and the rule of law ought to trump the reputational damage. The issues of the Constitution and the rule of law ought to trump the arguments somehow that the telecom companies will be less willing to step forward and help conduct the surveillance of our country when we are threatened by outsiders.

I cannot undo some of the things that have been done already. I wish I could undo the Military Commissions Act. I wish I could the outrages that occurred at Abu Ghraib. I wish I could undo what has happened at Guantanamo Bay. I wish I could undo secret prisons and extraordinary renditions. But there is a pattern here. It is not just the one event or two, it has been a pattern of behavior almost from the very beginning that ought to be deeply troubling to every single one of us.

So while I cannot undo those actions, why would I then add to that list by granting this retroactive immunity? What more do we need to know? Why are we being asked to do this? Why did this administration ask this committee to grant broad-based immunity to every single individual in our Government and our agencies, as well as to the telecom companies? What was behind that request? What did they fear when they sought that kind of unprecedented immunity, for both the private companies and every official involved in the decision to grant or insist upon this compliance? Why were they asking us to do that?

So I know, while others have written about this here, I find it deeply troubling that we can once more add this to the destruction of tapes and the CIA, the U.S. attorneys scandal involving the Department of Justice and U.S. attorney's offices. All of these matters, again, are in and of themselves individual cases, and yet, when you step back and think about the totality of them, why would this Congress, at this hour, decide we are going to yet once again say: OK, we'll let you get away with it one more time.

I wish I could go back and undo all of those abuses. I cannot. But we have the opportunity not to do this. All it will take is 39 other Senators.

All it will take is 40 of us here decide that at this moment in our history that we are going to stand up for the rule of law, we are going to stand up for the Constitution. No other issue we can get to is as important as the Constitution of the United States, no other issue is as important to me, ought to be to all Members, as the rule of law. And as I have done on five separate occasions since January 3, 1981, when as a 36-year-old I stood over here on the floor of the Senate, with Lowell Weicker standing beside me—I raised my right hand and took an oath to defend and uphold the Constitution of the United States. I am proud to have done it five different times, as every Member here has done at least once. What matter, what issue, would be more important than defending the Constitution of the United States?

So tomorrow we may have the chance—40 of us—to not invoke cloture and to insist that we are going to fight for this principle of the rule of law and not add to this litany that is going to be revisited over and over again: the Military Commissions Act, waterboarding, Abu Ghraib, Guantanamo Bay, secret prisons, extraordinary renditions, U.S. attorneys scandal, Scooter Libby, destruction of CIA tapes. How many more do you need? Why not add this: retroactive immunity to the telecom industry, at the request of a President who did not want the courts to determine the legality or illegality of the actions?

During a critical moment in American history, I for one am not going to allow that to happen.

I realize I have been talking a long time here. May I inquire how long I have been speaking?

The PRESIDING OFFICER (Ms. KLOBUCHAR.) Two hours 25 minutes.

Mr. DODD. As I say, I have already spent over 20 hours on this. And as I say, I have never engaged in extended debate in my 27 years because the matters were handled by others or because we came up with a resolution of issues. But I stand here tonight, as I have over the last several months—as many of my colleagues know, I interrupted a Presidential campaign to come back and spend 10 hours on the floor here when this matter came up in December, to raise my concerns about this issue. I do not want to try the patience of the staff and others, including my colleague who is patiently sitting in the Presiding Officer's chair with little or no relief. So more than 20 hours of making my case here is probably more than most people can tolerate. But I want people to know how much I care about this and how much I wish and hope and pray that this evening, Members, regardless of party, will stand up tomorrow for the rule of law.

So tonight, my fervent prayer and hope is that when this vote occurs, first of all, that I will be surprised and that 50 of our colleagues here will join with Senator FEINGOLD and myself and vote to strike this language from the Intelligence Committee bill. That would be the best result of all, and then we can send this bill to the other body and have it resolved and sent to the President, hopefully, for his signature. If that doesn't occur, then I hope 38 others would join Senator FEINGOLD and me in voting against cloture in a historic moment and send this bill back to be revised to comply with the Judiciary Committee's decision excluding the retroactive immunity. That would be the second best result.

With that, Madam President, after almost 2½ hours and the hours before, I yield the floor.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

The PRESIDING OFFICER. The Senate stands in adjournment until 10 a.m. tomorrow, February 12, pursuant to S. Res. 446, and does so as a mark of further respect to the memory of Tom Lantos, late a Representative from the State of California.

Thereupon, the Senate, at 10:09 p.m., adjourned until Tuesday, February 12, 2008, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate:

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS THE ASSISTANT COMMANDANT OF THE MARINE CORPS AND APPOINTMENT TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTIONS 601 AND 5044:

To be general

LT. GEN. JAMES F. AMOS, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL IN THE UNITED STATES MARINE CORPS WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

LT. GEN. KEITH J. STALDER, 0000