

Some workers who come by my office ask: What are you going to do to protect pensions which we have worked a lifetime for?

There is a long list of things we could do not driven by special interest groups. No. The first item on the agenda for the Senate is the asbestos bill, the clash of the special interest titans.

That is where we are going to spend our time.

When it is all over, I am afraid those who couldn't afford lobbyists, couldn't afford the people who stand outside the corridors with signals, hand signals, with a wink and a nod on how we are supposed to vote, those are the ones who are going to be the losers.

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

The PRESIDING OFFICER (Mr. ENSIGN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be 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.

ELECTRONIC SURVEILLANCE

Mr. SPECTER. Mr. President, on Monday, the Judiciary Committee held a hearing on the administration's electronic surveillance program and we dealt solely with the issues of law as to whether the resolution to authorize the use of force on September 14 provided authority in contradistinction to the Foreign Intelligence Surveillance Act, which flatly prohibits any kind of electronic surveillance without a court order. Then we got into the issue of the President's inherent powers under article II. It is difficult to define those powers without knowing more about the program and we do not know about the program. It was beyond the scope of our hearing, but it is something that may be taken up by the Intelligence Committee.

But I made a suggestion to the administration in a letter, in which I wrote to Attorney General Gonzales and put in the RECORD at our Judiciary Committee hearing, that the administration ought to submit this program to the Foreign Intelligence Surveillance Court. They have the expertise and they are trustworthy. It is a regrettable fact of life in Washington that there are leaks from the Congress and there are leaks from the administration, but the Foreign Intelligence Surveillance Court has been able to maintain its secrecy. The Attorney

General said the administration was disinclined to do that.

In response to the letter, he wrote, a written response, he said that they would exercise all of their options. I am now in the process of drafting legislation which would call upon the Congress to exercise our article I powers under the Constitution to make it more of a matter for congressional oversight, but respecting the constitutional powers of the President under article I. The Congress has very substantial authority. The President has powers under article II; the Congress has very substantial powers under article I. In section 8, there are a series of provisions which deal with congressional authority on military operations. One which hits it right on the head is to make rules for the Government and regulations of the land and naval forces. That would comprehend what is being done now on the electronic surveillance program.

The thrust of the legislative proposal I am drafting and have talked to a number of my colleagues about, with some affirmative responses, is to require the administration to take the program to the Foreign Intelligence Surveillance Court.

I think that they ought to do it on their own because I think that there are many questions which have been raised by both the Republicans and Democrats. We want to be secure and we want the military, the administration and the President to have all the tools that they need to fight terrorism, but we also want to maintain our civil liberties. If that unease would be solved by having the Foreign Intelligence Surveillance Court tell the administration that it is constitutional, if they say that it is unconstitutional, then there ought to be a modification of it so what the administration is doing is constitutional.

This comes squarely within the often-cited concurring opinion of Justice Jackson in the Steel Seizure case about the President's authority being at its utmost when Congress backs him, on middle ground when Congress has not spoken, and weakest when Congress has acted oppositely in the field, which I think Congress has done under the Foreign Intelligence Surveillance Act because the President's congressional authority then is whatever he has minus whatever Congress has that is taken away from him.

As Justice Jackson said, what is involved is the equilibrium of the constitutional system. That is a very weighty concept—the equilibrium of the constitutional system.

The legislation I am preparing will set criteria for what ought to be done to establish what the Foreign Intelligence Surveillance Court should apply in determining whether the administration's program is constitutional. The standard of probable cause ought to be the one which the Foreign Intelligence Surveillance Court should apply now—not the criminal standard,

but the one for gathering intelligence. Then they ought to weigh and balance the nature of the threat, the scope of the program, how many people are being intercepted, what is being done with the information, what is being done on minimization—which is the phrase that the information is not useful in terms of deleting it or getting rid of it—how successful the program has been, if any projected terrorist threats have been thwarted, and all factors relating to the specifics on the program—its reasons, its rationale for existence and precisely what is being undertaken, its success—and that the Foreign Intelligence Surveillance Court ought to look to this, essentially, prospectively.

The court does not have punitive powers, and I do not believe that it is of matter, except to work from this day forward as to what is being done. No one doubts—or at least I do not doubt—the good faith of the President, the Attorney General, and the administration on what they have done here. But as I said in the hearing, I said to Attorney General Gonzales, the administration may be right but, on the other hand, they may be wrong.

The Foreign Intelligence Surveillance Court ought to take a look at the program, make a determination from this day forward whether it is constitutional, and if it is constitutional, then they ought to, under the statute, report back to Congress with their determination as to whether it is constitutional.

The court ought to further make a determination as to whether it ought to be modified in some way which would be consistent with what the administration wants to accomplish but still be constitutional and not an unreasonable invasion of privacy.

The President has represented that his program is reevaluated every 45 days. That is in terms of the evaluation of the continuing threat and what ought to be done. I think a 45-day evaluation period would be in order here as well.

This question is one which is not going to go away. We had, yesterday, the comment by a Republican Member of the House of Representatives in the Intelligence Committee who chairs the subcommittee that oversees the National Security Agency. There are quite a number of people on both sides of the aisle who have expressed concerns regarding this program. It is my judgment that having it reviewed by the Foreign Intelligence Surveillance Court would accomplish all of the objectives, would maintain the secrecy of the program, would allow the President to continue it when there has been the determination by a court—that is how we determine probable cause on search warrants, on arrest warrants, on the activities, the traditional way of putting the magistrate, the judicial official between the Government and the individual whose privacy rights are being involved.