

work on an emergency basis for new things they want to do.

We want to maintain the ability to go after the bad people. We believe there is a necessity for intercepting telephone conversations between people who are trying to do bad things. We think it should be within the constitutional framework, and we believe that is what the Intelligence Committee and the Judiciary Committee have done. But I again say, without getting into any details, unless we do something today, unless someone can explain to me how we can pass something here in a matter of a few hours, how we can have a conference with the House in a matter of a few hours and then bring those two conference reports to the House and the Senate in a few hours—I say that is legislatively impossible.

So I am saying again to my Republican colleagues: Agree to some extension of time or the burden of this legislation not passing is on your shoulders because we have had no attempt to legislate. We have not had the opportunity to offer amendments, let alone vote on them.

Our goal is to provide the intelligence community with all of the legal tools it needs, while protecting the privacy of law-abiding Americans. So I would hope that in the next hour or so, we can work something out before the House leaves town or nothing will have been accomplished.

RECOGNITION OF THE MINORITY LEADER

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

FISA

Mr. McCONNELL. Mr. President, we have known we needed to get the FISA law extended for 6 months—6 months. I have also heard it suggested that somehow, little or no harm would be done if the law were allowed to expire. Well, that is simply incorrect. The ability to go after new targets would be eliminated with the expiration of this bill in 3 days. So here we are with 3 days to go, and I gather from listening to my good friend on the other side, the very real possibility is that there is at least some willingness on the part of some on the other side to just let the law expire.

Now, contrary to what some are saying, the expiration of this important antiterrorist tool has serious consequences; that is, if we don't get this job done, the notion that somehow it doesn't make any difference is certainly not true. Let me say again: Once it expires, intelligence officials will no longer be able to gather intelligence on new—new—foreign terrorist targets. The terrorists are not going to stop planning new attacks just because we stop monitoring their activities. Our enemies are watching. They know our

intelligence capabilities will be degraded once the Protect America Act expires. That is why we need to reauthorize FISA in such a way that we retain its full—its full—terror-fighting force. The Senate Intelligence Committee's version does just that. That is the Rockefeller-Bond bipartisan proposal that came out of committee 13 to 2. Senate Republicans stand ready to finish that good work the committee did and the administration began.

We have proposed a list of several amendments to our colleagues on the other side that could receive votes. I know those discussions are ongoing, and hopefully we can begin to have some votes. But we do not have the time to rebuild amendment by amendment a Judiciary Committee version that a bipartisan majority of the Senate has already defeated. It wouldn't become law even if we passed it.

Now, Republicans are ready to provide a short-term extension of the Protect America Act to keep the Senate focused on the importance of this critical terror-fighting tool. But after 10 months of waiting, we do not need—and the country cannot afford—another month of delay.

We await the response of our Democratic colleagues to our amendment proposal, and those discussions, as I indicated, are going forward, and we look forward to finishing the job in a way that allows our intelligence professionals to keep us safe from harm.

I yield the floor.

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

Mr. REID. Mr. President, we understand the implication of the legislation that is now in effect and will expire Thursday. We understand that. We understand there are new targets our intelligence officials may want to go after. We understand that. But I repeat: Using the words of my friend, the Republican leader, once it expires, if it expires, it is on the shoulders of the White House and the Republicans in the Senate. We have attempted to work through this, and we have been willing to extend this law for an extended period of time. We have been willing to extend the law for a limited period of time.

I think what this all boils down to is that we should extend the law for a long period of time because the only issue—there are other issues, of course, but the main issue is whether there will be retroactive immunity for the phone companies. That is what it all boils down to—whether there is going to be retroactive immunity to the phone companies. Some of us don't think that is appropriate; others think it is appropriate.

So why don't we extend this law for an extended period of time? That way, the new targets could be sought if, in fact, they are out there—and we all believe there are some, and that is necessary to be done—and then set up a time. We will agree to a time and have

a debate on the immunity provisions and see if the Senate and the House are willing to give retroactive immunity. In the bill my distinguished colleague, the Republican leader, talked about that came from the Intelligence Committee, that is in that bill. That is in their bill that came from committee. What the House has done doesn't have it in there. So why don't we have a debate on that issue and just extend the law? We will extend it until there is a new President. We are fine—we are happy to do that—so that we get off this: We can't do the targets. Why don't we just extend it for a period of time, and then our side will agree to try to work out something legislatively so that we can have a real nice debate on retroactive immunity.

Mr. DURBIN. Mr. President, will the majority leader yield for a question?

Mr. REID. I am happy to yield.

Mr. DURBIN. Mr. President, I would like to ask the Senator if he could recap for me two votes that I think are significant. There was a vote taken as to whether the Judiciary Committee version would be accepted. A cloture vote was taken, if I am not mistaken, and it was defeated. If I am not mistaken, that was last week. And if I am not mistaken as well, yesterday, when Senator McCONNELL offered a cloture motion to promote his point of view, there were only 48 votes in support of it out of the 60 that were necessary—4 from our side of the aisle, 44 from the Republican side.

It seems to me we need to put our heads together to work this out. Extending this law so that there is no damage or hazard to our country is a reasonable way to do this. We now have reached a point where amendments may be considered and voted on, and then we will be in a spot where we can pass a version in the Senate, send it to conference, and work out our differences. But I can't understand how the President and the Republican leader can come to the floor and blame us for the expiration of the law if we are offering an extension of the law and they keep refusing.

Mr. REID. Mr. President, I say to my friend, the distinguished Senator from Illinois, I personally have been to the floor and offered on many occasions to extend the time. We could all see the train wreck coming, and we believed that it was necessary to extend this law.

I don't know—I say very positively to my friend from Illinois and everyone who can hear me—I don't know if we can work anything out on these amendments. I don't know. On the title I aspect of it, one Senator has six amendments. I am sure—he has always been a reasonable person—he wouldn't have to offer that many. He has always been very good about time agreements. But there are 10 or 12 amendments to title I. Then there are three we have with title II dealing with some form of immunity.

But I repeat to my friend, Democrats believe the program should continue.

We are willing to say, OK, let it continue as it is now in effect. A lot of people don't like that. We are saying go ahead and let it continue. Certainly, there could be a significant majority of Senators—Democrats and Republicans—who will support that. And the issue is immunity.

I reverse the question and ask my friend from Illinois, should we not have a nice debate on immunity and find out how the Congress feels about what the President feels is important? That is how this country has worked for all these years. So extend this and do it until we have a new President—Democrat or Republican, man or woman, whoever it might be—and in the meantime have a decision made as to whether there should be retroactive immunity.

Mr. DORGAN. Will the Senator yield for a question?

Mr. REID. I will, but let my friend from Illinois answer that question first.

Mr. DURBIN. Mr. President, I say to the majority leader, it appears now that the Senate has to work its will. When the Judiciary Committee proposal was suggested, it didn't pass. When the Senator from Kentucky offered his cloture motion for his side, it didn't even have a majority vote. It had 48 votes in support, let alone the 60 that were required. I don't think we can expect to impose our will on this body. The Senate has to work its will. We could have considered a lot of amendments in the time we have lost so far in debate.

I say to the majority leader, how can we be held responsible for this law expiring if it is the Republicans who opposed extending the law? You have offered repeatedly to let them extend the law. They have said no.

Mr. REID. Mr. President, I say to my friend, let's extend it for any period of time, although I think that for each day it should be a longer period of time.

Mr. McCONNELL. Will the majority leader yield for a question?

Mr. REID. I will after I have yielded to the Senator from North Dakota. If anyone thinks we are going to come to an immediate agreement on all these amendments, we have overused the term "run the traps," but the Republicans are not going to agree to all of the amendments the Democrats want to offer. I will respond to my friend from North Dakota.

Mr. DORGAN. Mr. President, this is a complicated and certainly an important issue. It seems to me that it takes two sides to compromise. One of the things I am curious about, as I listened to this and to the Senator from Kentucky, the minority leader said we are ready to move forward. He said he is disappointed in the delays. Isn't it the case, however, that last week, when the cloture motion was filed by the Senator from Kentucky, they decided at that point to block everything else and stop everything from happening

until this week? It seems to me this delay has occurred because the other side has blocked the ability to offer amendments. Had we offered amendments, we would have probably been done with that at this point.

I say that there is not anyone in the Senate I am aware of—no one—who doesn't believe we ought to extend this FISA law. Nobody is in that position. Isn't that the reason for the delay and the reason we have not moved forward—that we were blocked when the Senator from Kentucky filed his cloture motion?

Mr. REID. Mr. President, I say to my friend, you were at the meeting with me just from 9 to shortly before the hour of 10 o'clock. A person who is heavily involved in this legislation, the distinguished Senator from Wisconsin, RUSS FEINGOLD, said this legislation should be extended. He has, on many occasions, voiced his opinion on what is wrong with the way we passed this legislation in August, and he has been very strong in his comments about how this law could be improved. Every Democrat in our caucus believes this law should be extended. I don't like to speak for everybody, but Senator FEINGOLD believes the law should be extended because it is the right thing to do. I cannot imagine why we have had all the difficulty we have had in extending this law. On a number of occasions, we have said if the law expires, it is not our fault.

Now I am happy to yield to my friend from Kentucky.

Mr. McCONNELL. I thank my good friend.

Mr. President, he indicated that the principal issue we are sparring over is the question of immunity from litigation for communications companies that cooperated in protecting our country. I am sure the majority leader knows that yesterday my side offered to his side a vote on the Dodd-Feingold amendment related to that issue, and a vote on the Specter-Whitehouse amendment related to that issue, and that package was rejected.

Mr. REID. Yes. I say to my friends, there are also other amendments. We talked about title I, and there are a number of amendments. I think we can reduce those on that side to maybe eight. They would all be short time limits. They would also make sure the record reflects that we believe they should be majority votes, not 60-vote margins.

Mr. McCONNELL. Is the majority leader yielding the floor?

Mr. REID. Yes, I am happy to.

Mr. McCONNELL. Mr. President, this is the kind of discussion, of course, that the Senate is witnessing that typically occurs between the majority leader and myself and managers of the amendments. To sum it up, this is the kind of legislative finger-pointing that turns the public off. But it is the way in which we go forward.

We had discussions yesterday about voting on the very issues the majority

leader just indicated are the key issues relating to this bill. Hopefully, during the course of the day, we will be able to come together and have the votes on the key amendments and move forward.

The President, of course, is not going to sign a lengthy extension or a 30-day extension. Any hope that we will extend existing law without dealing with the retroactive liability issue is a waste of energy and time. That isn't going to happen. So we are going to focus on this bill and, hopefully, find a way to go forward and let the Senate work its will.

If the House chooses to leave tonight, I find that a highly irresponsible act—right before the expiration of this very important law. There isn't anything more important that we are doing right now, with the possible exception of trying to figure out a way of going forward to stimulate our economy and prevent an extensive slowdown, than getting the homeland protected.

A key ingredient in securing that protection, we know, is getting this FISA law right and getting it passed—not some kind of short-term extension. The terrorists are not going to take a vacation for a few weeks or for 6 months or next year; they are going to be around for a while. We need to get this right and do it now, and today is a good day to get started.

I yield the floor.

Mr. REID. Mr. President, if this law is so good and we are able to, in the words of the Republican leader, "get new targets," why don't we extend the law? I don't understand why we are not doing that.

I tell everyone again that it is legislatively impossible to do anything as it relates to this legislation, as far as passing it today. It is impossible. We have a number of amendments that have to be handled. It is going to take a matter of quite a few hours. We can do it in 1 day, I think. Remember, we have to have everybody agree to that, all 100 Senators. Then the House has to agree to what we do or we have to agree to what they do or work out a compromise in conference. That cannot be done tonight. This is the last day we have to legislate. If we don't legislate today, we are going to move on to something else in a few minutes, because there is no agreement on FISA—to extend it. I think that is unfortunate. Having said it so many times already—and I am tired of hearing myself say it—if the law expires, Democrats have no blame whatsoever.

Mr. McCONNELL. Mr. President, let me wrap it up for myself by saying that we will be staying on this bill. We will not leave this bill.

Secondly, this is a bipartisan compromise that came out of the Intelligence Committee by a vote of 13 to 2, the Rockefeller-Bond bipartisan bill, which is supported by the President of the United States. That is the Senate at its best—a bipartisan bill. The President is willing to sign it. Our effort

here is to get it to him for his signature. He awaits our action.

I yield the floor.

Mr. REID. Mr. President, this bill is not a bipartisan bill. The bill that came out of the Intelligence Committee is bipartisan, but understand it was concurrently referred to the Intelligence Committee and the Judiciary Committee. They both have jurisdiction over this legislation. We cannot pick and choose what the President likes. We have a situation here where the Judiciary Committee is entitled to be heard. That is what they are asking for—to be heard. They demand that and it is appropriate.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will be a period of morning business for up to 1 hour, with Senators permitted to speak therein for up to 10 minutes each, with the time equally divided, with the Republican leader controlling the first half and the majority leader controlling the final half.

The Senator from Florida is recognized.

FISA

Mr. MARTINEZ. Mr. President, I wish to talk about the very important issue relating to foreign intelligence surveillance. I want to talk about it not in the sense of who gets to be blamed if something happens. I believe that on something of this magnitude, the American people are pretty tired of the blame game: We would have done this, but if you didn't do that, we blame you; and if this happens, you get to blame us. I think the time of blame-casting has well passed. The fact is that the laws that grant the Government the authority to use the resources we have in order to stay informed of what our enemies are seeking to do to us are outdated and need to be modernized and put up to date with our current technology. We are fighting a modern war against a modern enemy. The tools we have to fight that war are out of date. One of the only ways we are able to expose and stop terrorist plots before they unfold is through the provisions accorded under FISA.

Some of my colleagues have expressed an understandable concern about the current FISA reauthorization, and whether it would improperly invade the civil liberties of our citizens. After 2 years of public debate on the broad issues of FISA, and after reviewing the current legislation, I believe those concerns are unwarranted.

This issue transcends the stance of either political party or any partisan

interest. Those who oppose this are sincere in their concern; they just happen to be wrong. Needless hurdles will be created for our Government in the obtaining and utilizing of valuable intelligence to keep America safe. So I want to see us address this issue head on and come together and send the President a bill that he can and will sign.

The President spoke about this last night in his State of the Union Message. He wants to get this matter resolved, and he wants a bill on his desk. We owe it to the military and the intelligence community to equip them with the tools they need to protect our citizens and carry out their duties effectively.

Throughout our history, Americans have always been concerned about the proper balance between security and freedom. Those concerned about the power of Government and trampling on the rights of free citizens are right to insist on maintaining the individual liberties granted to us by the Constitution, especially during a time of crisis. The bill we are considering is precisely concerned with maintaining and keeping a proper balance of those protections.

This is a bipartisan bill. It was reported out of the Intelligence Committee by a vote of 13 to 2. It is a modern update that is designed to keep our technological edge and to effectively implement the goals of the original FISA law passed in 1978. This bill is the product of the careful consideration of Members of both sides of the aisle on the Intelligence Committee—those best informed about these matters, who have the most knowledge about the means and methods by which we gather intelligence. Those Members recognize a need to modernize the way our intelligence is collected and the need to share information that is vital to terrorist communications, whether these communications be on a cell phone, by e-mail, or in person. This bill is for the American intelligence services to be able to timely develop intelligence without having to wait for a court order. In other words, if a terrorist group such as al-Qaida calls a sleeper cell within our borders, this would ensure that our Government can protect our citizens, the specific procedure for surveillance, and it ensures that the independent FISA Court is fully informed of every step in the process.

The bill also has a provision to protect those who have assisted us and the intelligence community in gathering information that was absolutely vital to our national security. Fortunately, we have had full cooperation from a number of telecommunications companies in providing our intelligence officials with accessing and obtaining information from foreign terrorists.

As we look at this issue—and the majority leader says this issue is the big sticking point, so let me talk about that specifically, that this retroactive immunity for telecommunications companies allows bad actors to get off

the hook—who is it we are giving immunity to and why should it be retroactive? This has already been noted a number of times, but I think it bears repeating.

Retroactive immunity is necessary not only to protect companies that cooperated in good faith at the request of our President during the time of the most serious domestic crisis our country has ever faced, but it was done to ensure our national secrets regarding intelligence methods remained classified and are not disclosed in public through the civil court process. In other words, it is not just about providing immunity to those who helped at the time it was needed, but it is also to ensure that as we go forward, we are not going to have an O.J. Simpson-type trial, with television cameras blaring with information being disclosed. We know things do not keep. We know our enemies are capable of getting the information because it will be in the New York Times. The fact is, we want to keep our methods and sources secret and confidential, and this is a very important part of this immunity idea.

If you want accountability for the executive branch, we have a constitutional system of checks and balances, and leaving aside the President's authority under article II, we are exercising congressional oversight in passing S. 2248, and we, along with the FISA Court, are certainly going to be able to pay close attention to how we select intelligence going forward.

As far as letting bad actors off the hook is concerned, S. 2248 provides retroactive immunity from civil litigation if a series of conditions are met. The assistance was provided in connection with intelligence activity authorized by the President between September 11, 2001, and January 17, 2007, and was designed to detect or prevent terrorist attacks against the United States.

What is wrong with that? The assistance was also to be provided in response to a written request, a directive from the Attorney General or other intelligence community head indicating the activity had been authorized by the President and determined to be legal.

To me, it is a good idea to give these folks the kind of immunity that will allow them to continue to cooperate, that will say to them: The next time there is a vital emergency where your cooperation is needed, we didn't stick you with the bill, we didn't allow the courts to go wild. We protected you because you protected America. To me, that seems only fair and only right.

I hope we can get through the partisan morass that always seems to entangle us. I hope we can find a way we can pull together something of this magnitude and importance, which is about the national security of our country—it is about the intelligence needs of our intelligence community—and that we can come together in a timely fashion, craft this bill, take the bill the Senate Intelligence Committee passed on a bipartisan 13-to-2 vote, put