The fact is that this administration will not be here to see this sunset occur. Why would they care if there is a sunset in the bill or not? Their opposition demonstrates that those who are in charge of protecting our country know that a sunset is a bad idea and their opposition is based in logic and practical application. The administration knows that they will not be here, but the intelligence analysts who protect our country will. These analysts are not politically appointed, and do their job regardless of who the President is or what party the President represents. They need the stability of our laws to effectuate long term operations to prevent terrorist attacks, not guesswork which could hinder intelligence gathering practices.

We have already had a trial run with the 6-month sunset of the Protect America Act. Enough of the quick fixes, let's have confidence in the work product created by the nearly 10 months we have spent on this issue. A shorter sunset gives us an excuse to not legislate with conviction, and this is an excuse we should not make.

The 95th Congress had the ability to decipher complex problems and pass FISA with no sunset, and the 110th Congress can certainly modernize it without second guessing our capabilities by approving the Cardin amendment. I will oppose this amendment, and I urge my colleagues to do the same.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

ECONOMIC STIMULUS

Mr. CASEY. Mr. President, in the remaining moments of morning business, I wish to highlight a couple important points about our economic stimulus efforts in the Senate.

We have had an opportunity over the last couple weeks to analyze carefully what the American people expect in terms of a jolt to our economy and what they expect this body to do. Unfortunately, we have been stymied by a lot of politics. I think it is important to point out very briefly the elements of what the Senate is trying to do, at least on the Democratic side and, secondly, to highlight its importance to the American people.

First of all, with regard to the basic elements—I will not go into a long discussion—in order to stimulate this economy, we have to invest in strategies we know will work. One of those is unemployment insurance. We know that. All the economists say that. It is not because Democrats assert that; economists say one of the only ways that is proven to jolt our economy is to invest in unemployment insurance. This proposal on the Democratic side does that. The House proposal doesn't do that in the area of unemployment insurance. It doesn't address that.

The package this side of the aisle has been pushing is a $500 rebate. It is across the board for everyone and obviously for those who are married it is double that. But significantly, in this proposal 20 million American senior citizens are provided some relief. That wasn't addressed in the House proposal. I think that is an important omission. In order to get this right, in order to jolt our economy, we need to help seniors. We also need to make sure a quarter of a million disabled veterans are helped as well. That is an important feature.

Thirdly, avoiding foreclosure; doing everything we can in this stimulus package in a short-term way to help families avoid foreclosure is another critically important element.

Home heating costs: In my home State of Pennsylvania—and I know the same is true in Ohio and across the country—there has been a 19-percent increase in the costs that families have to heat their homes, in 1 year. So if that is happening in Pennsylvania, we know it prevails around the country. This proposal in this Chamber does that. It adds $1 billion for home heating costs.

Finally, helping businesses and energy: As to the cost to businesses, I think small businesses should get help in this rough economy, and this proposal helps our businesses. It also makes investments we should have—or I should say implements strategies we should have done months ago when it comes to incentivizing energy efficiency and other tactics to move toward a more energy independent economy.

So whether it is energy, whether it is helping businesses, whether it is making sure our seniors get relief, that our families get relief and that we focus on unemployment insurance, home heating costs, all these elements are critically important. It is not perfect. The Presiding Officer knows—and he shares this view with me—we wanted to do more with regard to food stamps. We are still going to try on that. But if that doesn't happen and some other things don't happen that I want, we still have to move this forward. I wish the other side of the aisle would allow us to go forward in a way that addresses these basic problems. We have seen a lot of talk on the other side but not nearly enough action to say we are going to support a proposal, not just what the House sent us but an improved and a much more significant proposal to hit this economy in the way we should hit it: With a stimulus to get the economy moving, to create jobs, to provide relief for our families, and to move into the future together. We can do that here. We should do it this week and make sure we don't pass something which is watered down and which would not do the job.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

FISA AMENDMENTS ACT OF 2007

The PRESIDING OFFICER. 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.

Cardin amendment No. 3930 (to amendment No. 3911), to modify the sunset provision.

Feingold-Dodd amendment No. 3915 (to amendment No. 3911), to place flexible limits on the use of information obtained using unlawful procedures.

Feingold amendment No. 3913 (to amendment No. 3911), to prohibit reverse targeting and protect the rights of Americans who are communicating with people abroad.

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.

Bond-Rockefeller modified amendment No. 3941 (to Amendment No. 3911), to expedite the review of challenges to directives under the Foreign Intelligence Surveillance Act of 1978.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. ROCKEFELLER. Mr. President, I wish to make a few comments on the amendment of the Senator from Wisconsin and what he referred to as the ''bulk collection'' amendment which he discussed yesterday and which is amendment No. 3912. I would ask that this time be taken from the opponents of the amendment, if that is all right with my vice chairman.

The Senator from Wisconsin is offering an amendment that he argues will prevent what he calls ''bulk collection''. The amendment is intended, as described by the Senator from Wisconsin, to ensure that this bill is not used by the Government to collect the contents of all the international communications between the United States and the rest of the world. The Senator argues that the amendment will prevent ''bulk collection'' by requiring the Government to have some foreign intelligence interest in the overseas party to the communications it is collecting.

I regret to say I must oppose this amendment strongly. I do not believe it is necessary. I do believe, as drafted, the amendment will interfere with legitimate intelligence operations that

protect the national security of the lives of Americans.

In considering amendments today, we need to consider whether an amendment would provide additional protections for U.S. persons and whether it would needlessly inhibit vital foreign intelligence collection. I do not believe the amendment, as drafted, provides additional protections. Furthermore, intelligence professionals have expressed their concern that this amendment would interfere with vital intelligence operations, and there are important classified reasons underlying that concern.

Let us review why the amendment is unnecessary. First, bulk collection resulting in a dragnet of all the international communications of U.S. persons would probably be unreasonable under the fourth amendment. No bill passed by the Senate may authorize what the fourth amendment of the Constitution prohibits. What is more, the committee bill, in fact, explicitly provides that acquisitions authorized under the bill are to be conducted in a manner consistent with that same fourth amendment of the Constitution.

Second, the committee bill stipulates that acquisitions under this authority cannot intentionally target any person known to be located in the United States. And to target a U.S. person outside the United States, the Government must get approval from the FISA Court.

Third, the committee bill increases the role of the FISA Court overseeing the acquisition activities of the Government. The bill requires court approval of minimization procedures that protect U.S. persons' information. It maintains the prior requirement of court approval of targeting procedures.

In the unlikely event the FISA Court would give its approval to targeting procedures and minimization procedures that allow the Government to engage in unconstitutional bulk collection, the committee bill also strengthens oversight mechanisms in the executive and legislative branches, such as requiring assessments by the inspectors general in the Department of Justice and relevant agencies. These mechanisms are intended to ensure that such activity is detected and prevented.

The sponsor of the amendment says his amendment only requires the Government to certify to the FISA Court that it is collecting communications of targets for whom there is a foreign intelligence interest. But the committee already requires the Attorney General and the Director of National Intelligence to certify to the FISA Court that the acquisition authorized under the bill is targeted at persons outside the United States in order to obtain foreign intelligence information. Because the remedy does not improve upon the protections in the bill for Americans and places new burdens on the surveillance of foreign targets overseas, I thus oppose this amendment and urge that it be rejected.

I yield the floor and reserve the remainder of the opponents' time.

The PRESIDING OFFICER. The senior Senator from Missouri is recognized.

Mr. BOND. Mr. President, I yield myself 6 minutes from the opposition to the amendment No. 3979, the Feingold-Webb sequestration.

During yesterday's sessions and prior sessions, there have been, regrettably, a number of inaccurate statements about the amendments we debated. Several of these amendments go to the very heart and strike at the very heart of foreign targeting. It is not an understatement to say that if they are adopted, they could shut down our intelligence collection and cause irreparable damage to our national security. So I am compelled to set the record straight. Working with my colleague and good friend, the chairman of the committee, Senator ROCKEFELLER, we want our colleagues to know what impact these amendments have.

We have made great progress in the Senate Intelligence Committee on the FISA Amendments Act of 2008 in providing additional protections, but we did so working with the intelligence community to make sure the measures we put in the bill would actually work.

Now, the first amendment we debated was amendment No. 3979, the sequestration amendment supported by and sponsored by Senators FEINGOLD and WEBB. In explaining this amendment, supporters claimed the Protect America Act was ''sold repeatedly'' as a way to collect foreign-to-foreign communications without a court order and this amendment allows this collection. We saw from the House RESTORE Act, which the DNI has told us—the Director of National Intelligence, whom I will refer to as the DNI—and from the debate on the Protect America Act that the focus on foreign-to-foreign communications is misplaced. The Protect America Act was intended to allow foreign targeting, just like this bill and for good reason. We cannot tell if a foreign terrorist is going to be calling or communicating with another foreign terrorist whether in some other country or whether some of that communication may occasionally come to the United States, and there is no way to tell. So it does no good to give the intelligence community authority to collect only foreign-to-foreign communication. You can't tell. That means you can't collect on any without getting a FISA Court or a FISC order. That was an impossible burden that the FISC judges told us overwhelmed and shut down their operations and did not protect American citizens. Yet we were told yesterday this amendment will not damage or slow down collection.

This amendment will not just slow down collection; it will stop it. It will stop it. In the words of one intelligence official, it would ''devastate our operations.''

Now, our bipartisan bill gives the intelligence community the ability to target terrorists, foreign terrorists overseas. That targeting is not, as has been suggested on the other side, ''dragnet surveillance.'' Rather, the intelligence community will be acquiring communications of foreign terrorists, spies, and others who seek to do us harm. That is not a dragnet; that is targeted. But if this amendment were to be adopted, its unreasonable limitations will prevent the intelligence community even from beginning the collection.

Now, I argued yesterday this amendment would prevent the intelligence community from intercepting the communications of Osama bin Laden with somebody in the United States. The Senator from Wisconsin disagreed, calling my argument questionable and claiming the amendment in no way hampers the ability to fight al-Qaida. That is not true. I find it interesting because that is not what his amendment says. First, the intelligence community can't even start the collection because there is no way to know if a terrorist, including bin Laden, is going to call or be called by a person in the United States. Second, from the amendment, page 2, lines 10 to 16:

> Such communications may be acquired if there is reason to believe that the communication concerns international terrorist activities directed against the United States, or activities in preparation therefor.

That means if bin Laden were planning an attack against the United Kingdom or against our foreign military bases or our foreign embassies abroad and calls into the United States to talk with an associate, we could not capture that call and protect our troops, protect our citizens, protect our officers overseas, because under the terms of the amendment, it does not concern activities directed against the United States. Not only is the limitation dangerous, it is unwise, unhelpful, and could lead to significant intelligence shortfalls.

Another dangerous aspect of the amendment is that it would foreclose the collection of foreign intelligence relating to nonterrorist threats. Our Nation faces daily threats, for example, from the proliferation of weapons of mass destruction. I have an amendment that deals with this issue specifically. What about North Korea, Iran, and Syria? Under this amendment, none of that information could be collected if the communication was to or from the United States. That is a limitation that should make all of us uncomfortable. There is no basis for it, it is unreasonable, and it could lead our country into severe jeopardy.

The DNI and the Attorney General agree with my reading of the amendment. Yesterday, we received a letter from them expressing their views about these amendments. The DNI and Attorney General stated that if this amendment is part of the bill presented to the President, they would recommend a veto. They wrote this in their letter:

> This amendment would have a devastating impact on foreign intelligence surveillance

operations; it is unsound as a matter of policy; its provisions would be inordinately difficult to implement; and thus it is unacceptable.

Ironically, this amendment is being advertised as the best way to protect America's privacy. But a fundamental problem with the amendment is that we can never know ahead of time what a communication says. Let's think it through. In order to figure out whether the communication concerns international terrorism, for example, an analyst will have to review the content of it. That actually results in more of an invasion of privacy than would ever occur under the standard minimization procedures that NSA uses every day. That makes no sense if we are trying to protect privacy.

Mr. President, it is news to me that the Intelligence Committee bill, as claimed on the other side, has no judicial involvement and no judicial oversight. I have said it before. This bill has more judicial oversight and involvement in foreign intelligence surveillance than ever before. There is court review and approval of the joint certification by the Attorney General and the DNI and of the targeting minimization procedures. If the court finds any deficiency in these documents, the Government must correct it or cease the acquisition. That is not an empty oversight.

The Intelligence Committee bill doesn't stop there. We took tremendous care to make sure there were specific protections for Americans' privacy in the bill. I suggest all Members look closely at these protections: express prohibitions against reverse targeting, against targeting persons inside the United States without a court order, against conducting any acquisition that doesn't comply with the fourth amendment. This bill goes further than ever before in ensuring that there are protections for Americans in the area of foreign targeting.

We heard the tired accusation that this bill will allow the intelligence community to intercept communications of anyone; that it gives ''unrestrained access to communications of every American.'' That is just plain wrong. Communications of U.S. persons will be intercepted only if those persons are talking to foreign terrorists or spies. And because of the minimization procedures, only those specific communications will be intercepted, and if they don't contain foreign intelligence value, then they will be minimized or suppressed.

According to the Senator from Wisconsin, this amendment is necessary because the minimization procedures in FISA are ''quite weak'' and inadequate. I am sure the FISA Court judges who have reviewed and approved these procedures would appreciate the implication that they are doing a bad job of protecting the privacy of Americans. Ironically, it is that same court that, under the Senator's amendment, will control the Government's access and use of incidental communications.

Mr. President, I reserve the remainder of our time and yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. Mr. President, I will use some of my time on a couple of these amendments. I know it must be difficult for the Chair to figure out which time to apply to which amendments, but I will try to identify them.

First, I will speak with regard to Feingold-Webb-Tester amendment No. 3979, which the Senator from Missouri was addressing. He referred to our concern that the rights and privacy of Americans could be affected by this bill as a ''tired accusation.'' I object to that characterization. I think this is clearly the kind of thing we should be worried about. I will tell you what is a tired accusation: the notion that somehow our amendment would affect the ability of the Government to listen in on Osama bin Laden. That is a tired and false accusation. The Senator has said that if bin Laden or his No. 3 man—whoever that is today, because we killed the last No. 3 man—calls somebody in the United States, we cannot listen in to that communication unless we have an independent means of verifying that it had some impact on threats to our security from a terrorist threat. That is what he claims, that we would not be able to listen in on that conversation. That is false.

The Feingold-Webb-Tester amendment specifically does not require a FISA Court warrant to acquire and disseminate the communications of any foreigner overseas who is suspected of terrorism. Mr. President, there is no separate threat requirement. The amendment merely requires that the Government label terrorism-related communications that have one end in the United States so they are traceable for subsequent oversight. And it simply requires that when the Government accesses and disseminates terrorist-related communications that it has already acquired that the court just be informed with the brief certification. I don't know where the Senator gets this bizarre idea that somehow you cannot listen in on a conversation of Osama bin Laden. I don't think it is credible to anybody that that would be the case.

Finally, he raises the concern that somehow we are insulting the FISA Court, saying they are not doing a good job. To the contrary, we are trying to give them the power to enforce their will. We are trying to give them the ability to say: Wait a minute. You guys are not doing what you said you were going to do. That is not an insult. That is essential for the court to be able to do its job. Let's worry less about the alleged and, frankly, false notions about the feelings of a secret court and worry more about the rights and privacy of perfectly innocent Americans.

Mr. President, I turn now to amendment No. 3915, another amendment I offered known as the use limits amendment. As I explained earlier this week, my amendment simply gives the FISA Court the option of limiting the Government's use of information about information about U.S. persons that is collected under procedures the FISA Court later determines to be illegal. That is about as minimal a safeguard as you can get.

It is unfortunate that some of those who oppose my amendment are mischaracterizing what it does. The Attorney General and the DNI sent the majority leader a letter yesterday in which they expressed their objections to this amendment. Twice in the letter, they stated that this amendment would place limits on the use of information that doesn't concern U.S. persons. That is flat-out false, Mr. President. The use limits proposed in this amendment specifically apply to ''information concerning any United States person.'' That is what it says. Use limits in this amendment apply only under those circumstances. There is nothing ambiguous about this language. These patently false claims that the amendment applies to information about non-U.S. persons just show the lengths to which opponents of the amendment will go to generate opposition to this or any other reasonable amendment.

We have also heard that the amendment would create a massive operational burden. Mr. President, that also just isn't true. The Government already does what is necessary to implement the use limits in the amendment.

First, declassified Government responses to oversight questions of the Congressional Intelligence Committees reveal that the Government is already labeling communications obtained under the so-called Protect America Act. So the Government already tracks which communications are acquired under these particular authorities, which would be the first step here.

Second, the Government already has to comply with minimization requirements that are supposed to protect information about U.S. persons. These requirements kick in whenever the Government wants to disseminate any acquired communications that include information about U.S. persons. That means intelligence analysts already have to determine, before any communications collected under these authorities can be used in any of the contexts we are talking about here, whether they contain any information about U.S. persons. Indeed, the administration constantly reminds us of this fact when claiming that minimization requirements do enough to protect Americans.

Mr. President, given that the Government is already required and equipped to examine any communications it proposes to use in order to determine whether U.S. person information is present, the argument that the amendment somehow imposes a massive new burden is very difficult to understand.

Perhaps the explanation lies in the administration's repeated statements

that the amendment would put limits on the use of information about non-U.S. persons. If this were true, then it is conceivable that my amendment would create an additional operational burden. But those statements are completely and utterly false, as I have explained. The amendment explicitly states that the use limits apply to ''information concerning any United States person''—information that is already subject to minimization requirements.

I want to also address the argument the chairman of the Intelligence Committee made that this amendment is somehow different than the existing use limits for emergency surveillance. The chairman argued that the amendment, unlike the emergency use limits, could affect ''thousands'' of communications. As I pointed out yesterday, the amendment addresses that concern by creating a huge exception to the use limitations, an exception that is not present in the emergency use limits provision. Under the amendment, the FISA Court can allow the Government to use even information about U.S. persons that is obtained by unlawful procedures, as long as the Government fixes the problem with the procedures. So, in fact, this amendment is far less restrictive than the use limits for emergency surveillance, despite the claim of the chairman otherwise.

Even more important, we have to remember what these thousands of communications are. The only information that would be subject to use limits is information about U.S. persons collected under illegal procedures—procedures that failed to reasonably target people overseas. The underlying bill prohibits the Government from collecting this information in the first place. My amendment gives this prohibition some teeth by limiting the use of information that has been illegally collected.

The opponents of this amendment may argue that the government has no intention of doing anything that would be unreasonable under the law. My response is, if it does, there ought to be some enforcement. There ought to be a way to make sure that doesn't happen, not just the assurance of the chairman and vice chairman.

Moreover, if the Government has collected thousands of communications illegally, isn't that all the more reason to try to contain the damage and limit the impact on innocent Americans? That is not hamstringing the Government; it is just requiring the Government to comply with the law that we are actually passing.

My amendment simply provides an incentive for the administration to follow the law as it is written. If we pass a law that has no meaningful consequence for noncompliance with the law, I think we are taking a real gamble as to whether the administration will choose to comply. I am not personally willing to accept the odds on that one.

Once again, I urge my colleagues to support this amendment, and I reserve the remainder of my time and yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. ROCKEFELLER. Mr. President, I ask my esteemed vice chairman if I might have 6 minutes to oppose Senator FEINGOLD's reverse targeting amendment No. 3913.

Mr. BOND. I am happy to yield that time to the chairman.

Mr. ROCKEFELLER. The Senator from Wisconsin has an amendment that requires a FISA Court order if the Government is conducting surveillance of a person overseas, but a significant purpose of the surveillance is to collect the communications of a person inside the United States with whom the target is communicating.

I share the Senator's goal in protecting the privacy interests of Americans, but I am afraid this amendment, as drafted, is unworkable and unnecessary.

The amendment is described as a way to prevent reverse targeting—circumstances in which the Government would target persons overseas when its actual target is a person within the United States with whom the overseas person is communicating.

The fact is, reverse targeting is prohibited under FISA today. I repeat, it is prohibited under FISA today. If the person in the United States is the actual foreign intelligence target, the Government must seek a FISA order, and, in fact, the Government would have to have every incentive to do so in order to conduct comprehensive surveillance of such a person.

What is more, the base bill, S. 2248, makes the prohibition on reverse targeting explicit. The Government cannot use the authorities in this legislation to target a person outside the United States if the purpose of such acquisition is to target for surveillance a person within the United States.

In addition, the base bill, the Intelligence Committee bill, also strengthens the protection of U.S. person information that is collected in the targeting of foreign targets overseas by requiring that the FISA Court approve the minimization procedures that apply to this collection activity.

The Feingold reverse targeting amendment, however, goes too far. The amendment would prohibit the Government from using the authorities of this act ''if a significant purpose'' of the acquisition is to ''acquire the communications'' of a particular known person within the United States. In order to acquire such communications, the Government would be required to seek a regular FISA Court order.

The problem is that we are revising the Foreign Intelligence Surveillance Act today in large measure precisely because we want the intelligence community to have the ability to detect and acquire the communications of terrorists who call into the United States. In other words, in order to detect and prevent terrorist attacks, finding out if a foreign terrorist overseas is in contact with associates in the United States is actually a significant purpose of this legislation, and it will always be a significant purpose of any targeting of a foreign terrorist target overseas by the intelligence community.

As the Statement of Administration Policy—that is objections usually that come over from the White House—points out:

> A significant purpose of the intelligence community activities is to detect communications that may provide warning of homeland attacks and that may include communication between a terrorist overseas who places a call to associates within the United States. A provision that bars the intelligence community from collecting those communications is unacceptable.

Who is to say that person from overseas is not a terrorist and he is contacting a person in the United States to discuss something which is not in the national interest or which has intelligence implications? You cannot in good conscience bar the intelligence community from collecting these communications. That is unacceptable.

Again, reverse targeting is prohibited under current law. I think that is the third time I have said that. Reverse targeting is prohibited by the committee bill. The amendment is not needed to achieve its stated goals. It will harm vital intelligence collection. I urge the amendment be defeated.

I reserve the remainder of our time.

The PRESIDING OFFICER (Mr. CASEY). Who yields time?

The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I will speak with regard to amendment No. 3913, the one about which the chairman just spoke, the so-called reverse targeting amendment I have offered. Reverse targeting is what happens when the Government wiretaps persons overseas when what they are really interested in is the Americans with whom these foreigners are talking. I think most of my colleagues would agree that this bill should not open up a backdoor to get around the requirement in FISA for a warrant to listen in on Americans at home.

The lack of any substantive arguments against my amendment is made clear by the letter the DNI sent on Tuesday. The arguments just offered by the chairman were almost identical to the arguments offered by the DNI and by the Attorney General. In fact, that letter, which severely mischaracterizes the amendment, actually underscores why the amendment is good both for civil liberties and for national security.

First, the letter confirms that reverse targeting is not, in fact, prohibited by the underlying bill. We keep hearing the chairman and vice chairman say it is already prohibited. It is not. The DNI writes that the Intelligence Committee bill only prohibits warrantless collection when the American is ''the actual target.'' That cannot be read as a prohibition on reverse

targeting. That is just a prohibition on direct targeting of an American at home, and it does nothing to protect Americans from what the DNI himself has said is unconstitutional.

Second, the letter cites ''operational uncertainties and problems,'' but it does not bother to identify what those are. Yes, my amendment would require a new procedure, just like everything else in this bill, but the Government should already have procedures to protect the constitutional rights of Americans. If it does not, that is all the more reason to adopt the amendment.

Third, the letter actually makes one of the strongest arguments in favor of my amendment when it warns of insufficient attention to the American end of an international terrorist communication. If a foreign terrorist is talking to an American inside the United States, the intelligence community should get a FISA warrant on that American so it can listen in on all his communications, and it certainly would have no problem getting that warrant. Without that warrant, the Government will never get the full picture of what that American is doing or plotting. Yet the DNI's letter seems to argue that the Government would not want to get a FISA Court warrant to listen in on all the communications, including the domestic communications, of a terrorist inside the United States. I do not believe this is a serious argument, but if it were, it would suggest that our Government is not doing everything it can do to track down terrorists.

Finally, the letter seriously mischaracterizes the amendment. The amendment does not bar acquisition of communications between terrorists overseas and their associates in the United States. It does not in any way affect the Government's ability to discover and collect those communications. It does not apply to incidental collection of communications into the United States, and it does not even apply when the Government has identified a known individual with whom the foreign terrorist is communicating. Only when a significant purpose of the surveillance is to get information on a person inside the United States does the Government need to get a court warrant. That is not just required by the Constitution of the United States, it is how the Government can most efficiently and effectively protect us.

I hope my colleagues will support this modest proposal to prevent these new powers from opening a huge loophole to the requirement in FISA that the Government get a court order to target Americans in the United States.

Mr. President, I reserve the remainder of my time on this amendment, and I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Missouri.

Mr. BOND. Mr. President, I yield myself 3 minutes on amendment No. 3913.

It is interesting to hear that the proponent of this amendment thinks the letter laying out the reasons against the amendment are reasons for it. That is a trick I have not learned, to say that when somebody says that the reverse targeting amendment would make it impossible when that person and those people really represent the agency responsible and the oversight body of the Department of Justice somehow makes their case.

I also call the attention of my colleagues to a statement from the Civil Liberties and Privacy Office of the Office of the Director of National Intelligence. In that statement, the Civil Liberties and Privacy Office says:

> Concerns have been raised that the PAA could result in the interception of U.S. person communications. As explained in the Department of Justice September 14 letter, and in a letter by the DNI's Civil Liberties Protection Officer dated September 17, 2007, U.S. persons' privacy interests are protected through ''minimization procedures,'' which must meet FISA's statutory definition. In addition, ''reverse targeting'' is implicitly prohibited under existing law.

As a side note, Mr. President, this measure explicitly prohibits reverse targeting, but the Privacy Office goes on to say:

> The SSCI bill in addition requires review of minimization procedures and explicitly prohibits reverse targeting. In addition, the bill provides the FISA court with ongoing access to compliance reports and information about U.S. person disseminations and communications, and the explicit authority to correct deficiencies in procedures. The bill also requires annual reviews of U.S. person disseminations and communications and extensive reports to Congress.

This is a clear statutory framework. As a practical matter, if there was a desire to target someone in the United States, if that person was thought to have foreign intelligence information and acting as an agent of a foreign power, an officer, or employee, a FISA Court order is the simplest way to do it. Nobody has explained how you can target a foreign terrorist to get collections on a particular U.S. person unless that person is engaged in a terrorist activity, and you have to target an overseas person who has foreign intelligence information, and that is the legitimate reason for making the collection against the foreign target. No terrorist information. The information is minimized and not used.

I yield the floor and reserve the remainder of the time.

The PRESIDING OFFICER. Who yields time?

Mr. BOND. 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.

PENDING NOMINEES

Mr. REID. Mr. President, I have a friend. I have known him for a long time. His name is Steve Walther. Steve Walther was a very prominent Nevada lawyer, a senior partner in a law firm, with qualifications that are unsurpassed. I have always liked Steve very much. And he made a comfortable living. I called him once and said: Steve, have you ever considered doing something different?

A wonderful story about Steve, to show what a tremendously good guy he is. He has a little boy named Wyatt. Steve married a woman and he raised their children. They were his children once married, but he had never had his own child. His wife went to the doctor, and she was nearing 50 years old and was sick, and found out she was having a baby. So late in life they had this baby, and I will never forget what she said. She said: When I had my first two babies, time went by so slowly. But she said: Now I am older and understand, and I want everything to be fine, so I can't take enough time to make sure the baby is fine. And the baby is fine.

Anyway, I said to Steve: You could afford to come back here. How would you like to be a member of the Federal Election Commission? He is not a Democrat; he is an Independent. He has done things for decades with the American Bar Association, held all kinds of prominent positions with the American Bar Association nationally. He said: OK, I think it would be a good idea. Wyatt can come back and spend some time in Washington. So he served for nearly two years on the Federal Election Commission. Everybody said he was outstanding, as I knew he would be.

Also on that Federal Election Commission, prior to the first of the year, was another Democrat by the name of Bob Lenhard. He had served on the FEC with Steve. He and Steve worked well together. They worked well together with everybody on the Commission, and he and Steve did a good job.

The Federal Election Commission is critically important because it enforces our Nation's campaign finance laws. Both these nominees lost their jobs at the end of last year because the Republicans refused to permit a vote on their nominations to the FEC. They said they would not allow an up-or-down vote on these nominations of Lenhard and Walther. Nothing about their qualifications. They were both outstanding members of the Federal Election Commission. The reason they would not allow a vote on them is they would not allow a vote on their own nominee, a man by the name of Hans von Spakovsky. They are filibustering their own nominee.

I said: Let's vote on all of the FEC nominees, any order you want. We will vote on ours first, last, we don't care. Let's just have a vote on them. No. Unless we would guarantee von Spakovsky would pass, no. I don't know if Mr. Spakovsky would pass. I suspect the Republicans don't think so. But it seems fair to me that we should have votes on these nominees.

The record over the years is full of remarks by my Republican colleagues characterizing the up-or-down vote as the gold standard of reasonableness in Senate process. That is apparently not the view when it comes to one of their nominees, who would actually stand a chance of losing a vote. Republicans won't allow a vote on our Democrats unless we approve this person. That doesn't make sense.

The reason these FEC nominees, including Steve Walther, have not been approved rests squarely with the White House and the Republicans.

Mr. President, I ask unanimous consent to have printed in the RECORD two editorials.

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

[From the New York Times, Jan. 31, 2008]

WHILE THE ELECTION WATCHDOG WANDERS

The presidential campaign's heated fundraising sweepstakes finds lobbyists hurriedly ''bundling''—amassing additional hundreds of thousands from donors to re-stake surviving contenders for the next primary rounds. (Lobbyists reportedly bundled $300,000 for Senator John McCain in one night in Washington after his stock revived on the campaign trail.)

In packaging political influence by superlarge chunks, money bundlers are at least as crucial to understanding where candidates stand as their campaign vows. Fortunately for voters, a new election law mandates the disclosure of the names of lobbyists and other bundlers working the high-roller realm of donations of $15,000 or more. Unfortunately for the same voters, this vital law cannot yet be implemented.

A partisan standoff blocks the Senate from filling four existing vacancies on the Federal Election Commission. The six-member panel is powerless to form a quorum and write the regulations needed to shed sunlight on bundling. Senator Mitch McConnell, the Republican minority leader, is refusing to allow individual up-or-down majority votes on nominees for the commission. Mr. McConnell threatens a filibuster unless they are voted on as a single package—an obstructionist tactic to protect a highly unqualified Republican nominee, Hans von Spakovsky, from rejection in a fair vote.

Mr. von Spakovsky is a notorious partisan who previously served the Bush administration as an aggressive party hack at the Justice Department. There, he defended G.O.P. stratagems to boost Republican redistricting and mandate photo ID's in Georgia—a device to crimp the power of minorities and the poor who might favor Democrats at the ballot.

President Bush refuses to withdraw the von Spakovsky nomination, while the Democrats demand he be considered on his individual record, not yoked to three less controversial nominees. We urge the Senate majority leader, Harry Reid, to highlight this blot on democracy by moving the von Spakovsky nomination as a separate measure and demanding a cloture vote. Force the Republicans to either filibuster against their own unqualified partisan or dare to vote for him in broad daylight.

[From the Washington Post, Jan. 28, 2008]

UP OR DOWN

''We need to get him to the floor for an up-or-down vote as soon as possible,'' Sen. Mitch McConnell (R-Ky.) said of Michael B. Mukasey, then the nominee for attorney general. John R. Bolton ''deserves an up-or-down vote so that he can continue to protect our national interests at the U.N.,'' Mr. McConnell said of the nominee to be United Nations ambassador. ''Let's get back to the way the Senate operated for over 200 years, up-or-down votes on the president's nominee, no matter who the president is, no matter who's in control of the Senate,'' he said during the dispute over judicial filibusters.

Mr. McConnell's devotion to the principle of up-or-down votes for nominees, it turns out, has limits: Apparently fearing defeat if a simple majority vote were allowed, the minority leader has refused to accept Senate Democrats' offer for such a vote on President Bush's choice for a Republican seat on the Federal Election Commission. The consequence is that, as the country begins an election year, the agency entrusted with overseeing enforcement of the federal election laws is all but paralyzed: Only two commissioners are in place, meaning that the agency, six members when it is at full strength, cannot initiate enforcement actions, promulgate rules or issue advisory opinions.

The standoff involves Hans A. von Spakovsky, a former official in the Justice Department's civil rights division who had been serving as an FEC commissioner until his recess appointment expired last month. Democrats and civil rights groups argue, with some justification, that Mr. von Spakovsky's tenure at Justice was so troubling that he does not deserve confirmation to the FEC post. Some Democrats had threatened to filibuster the nomination, but Senate Majority Leader Harry M. Reid (D-Nev.) managed to offer an up-or-down vote on each of the four pending nominations to the agency, two Republicans and two Democrats. But Mr. McConnell and fellow Republicans have insisted that the nominees must be dealt with as a package, with no separate votes allowed. To be fair to Mr. McConnell, the practice has been to vote on FEC nominees as a package to ensure that the politically sensitive agency remains evenly divided between the two parties. But that has not been an absolute rule; indeed, the last nominee who generated this much controversy, Republican Bradley A. Smith, had a separate roll call vote and was confirmed 64 to 35 in 2000. But Senate Democrats could commit to a quick vote on a replacement nominee, if they were able to muster the votes to defeat Mr. von Spakovsky.

We have suggested previously that it is more important to have a functioning FEC than to keep Mr. von Spakovsky from being confirmed. But Mr. McConnell ought to explain why the up-or-down vote he deemed so critical in the case of Mr. Mukasey, Mr. Bolton or appellate court nominee Miguel A. Estrada is so unacceptable when it comes to Mr. von Spakovsky.

Mr. REID. Mr. President, I can gather one thing from the President's unwillingness to resolve the Federal Election Commission problem. That is that they would rather have no election watchdog in place during an election year.

The background on the FEC makes the call from Mr. Walther particularly remarkable. Listen to this, now. It even gets better.

Steve Walther called to tell me he had been invited to the White House by the President to push for his nomination. I got calls from other people whom I had placed in the works to get approved by the Senate. They were all invited to the White House tomorrow morning. All nominees that the President has pending were invited to the White House, Democrats and all. Why? To complain about the Democrats not approving them.

This leads me to tell you a little experience I have had, and we have all had, with this President. The President is in fact hoping to have breakfast with all the nominees, Democrats and Republicans, now pending in the Senate, in an effort to force the Senate to confirm all these people. They must live in some alternative universe. I talked yesterday about the Orwellian nature of this White House, and this is it. He has invited people to the White House to complain about our not approving them when they—the President and the White House—are the reason we are not approving many of them.

He invited Mr. Walther, Mr. Lenhard and other Democratic nominees to the White House, along with all his Republican nominees, to get them to be a backstop, a picture, so he can come out and give one of his Orwellian speeches that these people are not being approved because of the terrible Democrats in the Senate. Actually, we are waiting for him to allow us to have votes on a number of these nominees.

The President's breakfast only needed one attendee. Only one. That is because only one nominee matters to this President. It should be an intimate breakfast between President Bush and a man by the name of Steven Bradbury. Why do I say that? I say that because of all the nominees the President will profess to care about at this breakfast, Steven Bradbury stands head and shoulders above all the others in the President's esteem. I am not guessing; I was told so by the White House.

Right before the Christmas recess, I called the President's Chief of Staff, Mr. Bolten. A wonderful man; I like him; easy to talk to and easy to deal with. I said: I tell you what, Josh. We are going to go into recess, and why don't we have an agreement on who the President wants to have recess appointed and, in fact, I will give you some suggestions. You can have a member of the Federal Reserve Board of Governors, you can have a Federal Aviation Agency, and you can have a couple of other Chemical Safety Board members. I said: Not only that, there are 84 other Republican nominees we will approve. There are 8 Democrats, 84 Republicans. Pretty good deal. He said: Let me check.

He called me back and he said: Well, what we want is to have a recess appointment of Steven Bradbury. I said: Josh, I didn't recall the name. Let me check. I checked with Chairman LEAHY, I checked with Senator DURBIN, who is a member of that committee, I checked with Senator SCHUMER, who is on that committee, and they and others said: You have to be kidding. This is a man who has written memos approving torture, and that is only the beginning.

Senator DURBIN—I don't know if he has time today—will lay that out in more detail.

I called Josh back and I said: Josh, that man will never get approved. He has no credibility. He said: Well, let me check with the President. He called back and said: It is Bradbury or nobody. I said: You are willing to not allow 84 of your people to get approved because of this guy? He said: Yes, that is what the President wants.

Now there are 84 nominees, and among them somebody Secretary Chertoff wanted badly. Secretary Chertoff called me personally on someone and he said: You have to give us this person. We have important things to do here. If I don't get her, they will send me somebody from OMB, and that will be a person who doesn't know anything from anything. You have to help me with this.

The head of Alcohol, Tobacco and Firearms, four Department of Defense assistant secretaries, the Deputy Director of the National Drug Control Policy, the Director of the Violence Against Women's Office, Assistant Attorney General, Under Secretary of Commerce for International Trade, Director of the Census, Solicitor for the Department of Labor—these are only a handful of the jobs of the 84.

Now, these jobs, all Republicans, all names given up to us by the President, are jobs these people have sought for their whole lives. Head of the Census, head of the National Drug Control Policy, Director of Violence Against Women's Office, Solicitor for the Department of Labor. Nope, they are not going to have a job.

I thought about that. That was a decision the President made, willing to throw 84 people under the bus, run over them, for one person he knew he couldn't get. That is 84 plus the 4 he could recess appoint. So what we did, we stayed in session during the entire holiday recess. But before we went out, I thought to myself, I don't know these 84 people. Some of them I have met, but these are jobs that are important to our country, jobs that are important to these individuals and their families. I made the decision that because the President is willing to do what I think is so unfair, so unreasonable, that doesn't mean I am going to be unfair and unreasonable. So I called Secretary Chertoff and others and said: Just because your boss is unreasonable and unfair, I am not going to be that way. So I am going to walk out on the floor and approve every one of them, which we did. So for him to have that meeting tomorrow takes about as much gall as I can even imagine, to have a meeting where he brings in all the people who have not been approved. And had I not been, in my own words, generous, he would have had 84 more people he would have had to invite down there.

I can't imagine how he could invite Democrats down to the White House. Several of them are being blocked in this body by Republicans. Same goes for a number of Republican nominees. Democrats are willing to approve them and Republicans stand in the way. Why would he invite them down there also? But he did, because there is an Orwellian thought process that goes on down there saying Democrats aren't allowing these people to get approved, which is the direct opposite of the truth.

All for one person it appears, Mr. Bradbury. Whatever the White House wants, Bradbury would give it to them in a legal opinion. We are not going to accept that. What the President is trying to do with this show tomorrow is so unreasonable, so unfair, and so out of step with reality—as is the budget he gave us on Monday—that I hope the American people understand what is going on in this country.

It is too bad we have a situation where the President of the United States would have a meeting in the White House and invite everybody to say: I am sorry you are not going to be approved, it is their fault, when the truth is, it is his fault.

Now, here are the people we confirmed. They are right here. Everybody can see them. We confirmed all of them. And had it been up to the President, not a single one would have been confirmed.

The PRESIDING OFFICER. The assistant majority leader.

Mr. DURBIN. Mr. President, I am glad the majority leader has come to speak about this issue. It is hard to imagine what is going through the mind of the President that he believes he can make an argument tomorrow with the meeting at the White House, that we have been unreasonable in dealing with his nominations.

Senator REID spelled out what happened. We tried, in many ways, to get some balance in nominations. That is done all the time so Republicans and Democrats will be appointed. It is done by both parties. I have seen it in the years I have been around the Senate. When Senator REID made that offer in December, the White House said: No, they would not do it unless they could have this one nomination, Mr. Bradbury. And I will have to say I think Senator REID went that extra mile, an extra 84 miles, as a matter of fact, and he basically said 84 of those Bush nominees would be confirmed.

The majority leader recounted several phone calls he received this week from Democratic nominees to bipartisan commissions. I heard from my friend, Tom Carper, not the Senator from Delaware but a friend of mine from McComb, IL, who has been nominated to serve on the board of directors of Amtrak.

Tom has been working on passenger rail issues for 20 years, 12 years as mayor of the city of McComb, IL, which is served by Amtrak. As mayor, he served as the chairman of the Amtrak Mayor's Advisory Council. He received national recognition for his leadership on Amtrak issues.

He saw firsthand the enormous potential that passenger rail service can have for towns, such as McComb, small towns that might be overlooked otherwise. He helped to make the potential of Amtrak service a reality. We have such a success story of Amtrak in Illinois in the last year or two, with dramatic increases in ridership. Tom saw this coming and was a real leader. He convinced the State of Illinois to double its State investment in Amtrak. He worked with a broad coalition of passenger, business, labor groups, and elected officials to increase Amtrak service across our State.

We are experiencing a renaissance in terms of passenger rail in our State in a short period of time. Senator REID was given an opportunity to fill a vacancy on the Amtrak board. I asked him to consider former Mayor Tom Carper of McComb, IL. He was kind enough to recommend him. There are seven voting members on the Amtrak bipartisan board—three Republicans, three Democrats, and the Secretary of Transportation. Currently, there are four vacancies on the board, which means the board does not have enough members for a quorum, and it forces the board to conduct business via an ''Executive committee.''

On our last day of session in December, Senator REID, I think through great effort and courtesy, rose above the President's refusal to cooperate on nominations and worked to confirm more than 80 nominations in a single day. But we could have—and should have—confirmed at least two more. Senator REID and I worked together and offered to confirm two nominees to the Amtrak board—one Democrat, Tom Carper, and one Republican, both of whom had been favorably reported by the Commerce Committee.

The Republicans objected. They insisted that we confirm one Democrat and two Republicans or none at all. Now, this ''all-or-nothing'' approach is not new. We have seen this before when it comes to nominations.

As the majority leader described, I think the most glaring example of this is the nomination of Steven Bradbury to be Assistant Attorney General. The majority leader was willing to allow additional confirmations—and even recess appointments—for a number of nominations.

I can tell you, having dealt with Senator REID, he bends over backward to be balanced in this approach. That is the way it has to be in the Senate. That is the way the institution operates. But the White House turned down his offer. They turned down his offer because of one nomination, the nomination of Steven Bradbury.

It was clear this request, Mr. Bradbury, was going to be rejected. Mr. Bradbury's nomination has been returned to the White House four times since he was first nominated for the job in June 2005. What part of ''no'' does the White House fail to understand?

Why does the President care so much about this one nominee that he is willing to sacrifice all these other nominees? He is going to fill the White

House with people who are going to have this fine White House china in front of them, sipping coffee and tea and eating little cookies and complaining that somehow or another the Democrats in the Senate are ignoring their need to serve our Government.

We are not ignoring it. Senator REID has offered repeatedly to confirm these nominees on a balanced basis, even giving the President 84 nominees without this balance. They have said: No deal unless we get Steven Bradbury. He is the only appointment, clearly, who is important to this administration. Why? What is it about this man? What would possibly be in his background or his potential for future service that would be so important?

Well, this is worth talking about for a minute. Steven Bradbury is the head of the Office of Legal Counsel, also known as OLC. OLC is a small office and most people have never heard of it, but it has a great deal of power, especially in this administration. The Office of Legal Counsel issues legal opinions that are binding on the executive branch of Government.

In the Bush administration, OLC has become a rubberstamp for torture policies that are inconsistent with American values and laws. In August of 2002, the Office of Legal Counsel issued the infamous torture memo. This memo sought to redefine torture, narrowing it to a limited situation of abuse that causes pain equivalent to organ failure or death. These words meant the United States was preparing to abandon generations of commitment to outlawing and prohibiting torture. This memo also concluded the President has the right to ignore the torture statute, which makes torture a crime. This memo was official Bush administration policy for years, until it was finally leaked to the media, and the administration was forced to repudiate it.

Jay Bybee, who was then the head of the Office of Legal Counsel, signed that memo. Unfortunately, Mr. Bybee was confirmed to a lifetime appointment on the Federal bench in the Ninth Circuit before Congress and the American people learned about his complicity in the creation of this infamous torture memo, a memo that was repudiated by the Bush administration once it became public.

Jack Goldsmith succeeded Jay Bybee as head of the Office of Legal Counsel. Mr. Goldsmith is a very conservative Republican, but even he was disturbed when he heard what was happening at the Office of Legal Counsel.

As head of that office, he revoked the misguided OLC opinions dealing with warrantless surveillance and torture. He decided those opinions went too far.

Deputy Attorney General Jim Comey supported Mr. Goldsmith's actions. Let me say a word about Mr. Comey. My colleague and friend for years, Senator SCHUMER, first told me about Jim Comey when he was chosen to be the Deputy Attorney General under Attorney General Ashcroft. Senator SCHUMER told me Jim Comey was a straight shooter, an honest man who would not compromise his principles in public service. He said I could trust Jim Comey. During the period Jim Comey served in our Government, CHUCK SCHUMER was right. Jim Comey enjoys that reputation because he earned it.

We now know what happened because it has come to light that there was an infamous showdown at the bedside of Attorney General John Ashcroft, who was hospitalized in an intensive care unit, where White House Chief of Staff Andrew Card and former Attorney General Alberto Gonzales tried to pressure a then-ailing John Ashcroft into overruling Jack Goldsmith and his acts in the Office of Legal Counsel. It is hard to imagine that they would go into a hospital wing, with the acting Attorney General and with the President's Chief of Staff, to a man in an intensive care unit and try to persuade him to sign a document to overrule Jack Goldsmith.

Fortunately, Attorney General John Ashcroft, to his credit, refused. When Jack Goldsmith finally left the Justice Department, the administration realized they did not need any more trouble from the Office of Legal Counsel, they needed someone in that office who would not rock the boat, would not question their opinions, someone who would rubberstamp their policies.

So, in June 2005, President Bush nominated Steven Bradbury to succeed Jack Goldsmith—Steven Bradbury, the person who has now become the centerpiece of the entire appointment agenda of the Bush administration. Although Mr. Bradbury has never been confirmed in this position, he has effectively been head of OLC for 2½ years.

In 2005, Mr. Bradbury reportedly signed two OLC legal opinions approving the legality of abusive interrogation techniques. One opinion, on so-called ''combined effects,'' authorized the CIA to use multiple abusive interrogation techniques in combination.

According to the New York Times, then-Attorney General Alberto Gonzales approved this opinion of Mr. Bradbury over the objections of then Deputy Attorney General Jim Comey, who said the Justice Department would be ashamed if the memo became public.

Mr. Bradbury also authored and Alberto Gonzales approved another Office of Legal Counsel opinion, concluding that abusive interrogation techniques, such as waterboarding, do not constitute cruel, inhumane or degrading treatment. This opinion was apparently designed to circumvent the McCain torture amendment. I was proud to cosponsor JOHN MCCAIN's torture amendment. We are in the midst of a Presidential campaign, and I suppose you have to be careful as a Democrat saying anything positive about a man who may be the Republican nominee.

But I could not think of another Senator who could speak with more authority on interrogation and torture than JOHN MCCAIN, who spent over 5 years in a Vietnam prison camp. He came to this floor and made an impassioned plea for us to make it clear that torture would not be part of American policy.

In the end, he won that amendment by a vote of 90 to 9, an amendment which absolutely prohibits cruel, inhumane or degrading treatment. Steven Bradbury, now infamous for his role in memo after memo relating to torture, felt he found a way, through an opinion, for the administration to avoid the impact of the law the President signed, the McCain torture amendment.

That is what this is about. This is not a casual situation where I find Mr. Bradbury personally offensive. We are going to the heart of a question as to whether this man can serve this country in this critical position in the White House based on what we have seen over and over again: his complicity in some of the most embarrassing chapters in this administration, including some that have been publicly repudiated.

Last fall, while the Senate was considering the nomination of Judge Michael Mukasey to be Attorney General, the judge pledged to me in writing that he would personally review all of the Office of Legal Counsel's opinions dealing with torture. He said he would determine whether each of these opinions can be provided to Congress and whether he agreed with the legal conclusions of each of these opinions. This promise made by Attorney General Mukasey to me, to the Judiciary Committee, and to the Senate is a matter of public record.

Last week, Attorney General Mukasey appeared before the same Judiciary Committee for the first time since he was confirmed. I asked him point-blank whether, as he had promised, he had reviewed all of the OLC torture opinions. I specifically asked him about Steven Bradbury's ''combined effects'' opinion, which Jim Comey said would shame the Justice Department if it became public. Sadly, the Attorney General said he had not reviewed those opinions. He realized that he had made a promise to me that he would, and we left it at that. He did acknowledge in the course of his testimony how much he respected Jim Comey, how he had turned to him for advice and believed he was an honorable man. I feel the same. I trust that Attorney General Mukasey is also an honorable man who will keep his word.

In the meantime, while all of this continues, Steven Bradbury remains as the effective head of the Office of Legal Counsel, even though it has been 2½ years since he was nominated and he has never been confirmed. Legislation known as the Vacancies Reform Act prohibits a nominee from serving for this long without confirmation. It makes a mockery of the confirmation process that Mr. Bradbury assumes a role he has never been given under the law. Apparently, he is so important to

the Bush administration, they are willing to violate this law to keep him in his position, and they are prepared to toss overboard scores of nominations which could be approved by this bipartisan Senate if they would only relent on this nominee, who is obviously not going to be approved. The fact that Mr. Bradbury continues to serve as the effective head of the Office of Legal Counsel appears to be an attempt to circumvent the confirmation process in order to install this controversial nominee in a key Justice Department post in the closing days of this administration.

Ironically, the Vacancies Reform Act to which I referred was passed by the Republican-controlled Congress in 1998 to limit the ability of then-President Clinton's nominees to continue to serve in an acting capacity. The legislation was specifically targeted at Bill Lann Lee, the first-ever Asian-American head of the Civil Rights Division. Apparently, the Bush administration is ignoring the very law which a Republican Congress passed to make it clear that the President does not have the authority to appoint people like Steven Bradbury in an acting capacity without confirmation.

Why has Mr. Bradbury not been confirmed? For years, the Justice Department has refused to provide Congress with copies of the opinions Mr. Bradbury authored on torture. Mr. Bradbury has refused to answer straightforward questions from myself and other members the Judiciary Committee regarding his role in this.

Here is what I said in November 2005 about Mr. Bradbury's nomination:

> Since the Justice Department refuses to provide us with OLC opinions on interrogation techniques, we do not know enough about where Mr. Bradbury stands on the issue of torture. What we do know is troubling. Mr. Bradbury refuses to repudiate un-American and inhumane tactics such as waterboarding.

As I have said before, I believe that at the end of the day, when the history is written of this era, there will be chapters that will not be friendly to this administration.

In past wars, Presidents of both political parties have been guilty of excessive conduct, in their own view, as part of national security. One can remember the suspension of habeas corpus by President Lincoln during the Civil War, the Alien and Sedition Act of World War I, and the Japanese internment camps of World War II. All of these examples, as we reflect on them in history, do not reflect well on this country. Decisions were made which many wish could be undone. The same is likely to be true when it comes to the issue of torture and the war on terrorism under the Bush administration; this issue of warrantless surveillance, where for years, literally, this administration went beyond the law and attempted to intercept communications when they could have come to Congress and received bipartisan support for an approach which would have kept America and our Constitution safe.

Yesterday, we learned why Steven Bradbury is so important to the White House. We also learned why he refuses to condemn waterboarding. It was Super Tuesday, so a lot of political minds were focused on other places and other things. Unfortunately, it didn't get a lot of attention, but every American should know what happened yesterday on Capitol Hill.

In testimony before the Senate Select Intelligence Committee, CIA Director Michael Hayden acknowledged that the United States of America has used waterboarding, a form of torture, on three detainees. Waterboarding, or simulated drowning, is a torture technique that has been used since at least the Spanish Inquisition. It has been used by repressive regimes around the world.

Every year, the State Department issues a report card on human rights in which we are critical of other countries that engage in what we consider to be basic violations of human rights. Included in those basic violations is torture of prisoners. Included in that torture is waterboarding. So once a year we stand in judgment of the world and condemn them for engaging in waterboarding and torture techniques on their prisoners. Yet it is clear from the testimony yesterday of General Hayden that we have engaged in some of those techniques.

Following World War II, the United States prosecuted Japanese military personnel as war criminals for waterboarding American servicemen. The Judge Advocate Generals, the highest ranking military lawyers in each of the U.S. military's four branches, have stated publicly and unequivocally that waterboarding is illegal.

Now the United States of America has acknowledged engaging in conduct that we once prosecuted as a war crime. This is unacceptable.

Yesterday, I sent the Attorney General a letter. I wanted to spell out clearly for him, so there is no misunderstanding, why it is important that he respond to several requests which I have made for information. At the heart of it is a good man, a judge named Mark Filip, who serves in the Northern District of Illinois, a man whom I supported for his confirmation as a Federal judge and who has received positive reviews for his service on the bench.

Attorney General Mukasey would like Judge Filip to be his Deputy Attorney General. That is a good choice. But I have said to the Attorney General, there is only one thing between my enthusiastic vote for Mark Filip and his remaining on the calendar: The Attorney General has to respond to inquiries I have made, some of which were made months ago, on this critical issue of torture. I wanted to make certain that there was real clarity in my request. So I sent a letter to the Attorney General yesterday and said: Here is exactly what I am looking for, the letters we have sent, the questions we have asked, and I want you to respond to them. I hope I receive that response by the end of the day. If I receive that response and it is a good-faith response, even if I disagree with it, if it is a good-faith response, then Judge Filip can move forward. I hope he will. It is now in the hands of Attorney General Mukasey.

Let me highlight two of the questions I am asking: First, does Attorney General Mukasey agree with the legal conclusions of the Office of Legal Counsel torture memos written by Steven Bradbury, that Jim Comey believes the Justice Department would be ashamed of if they were made public? Second, will the Justice Department investigate the administration's use of waterboarding to determine whether any laws were violated? I didn't call for prosecution but simply for an honest investigation.

I recognize the Bush administration wants to confirm Steven Bradbury, to ensure they have a firewall to protect their torture policies. But what is at stake here is more important than this one nominee. This is about who we are as a country. This is about the United States, our values, our standards of conduct. This is about whether the United States can, with a straight face, be critical of regimes and countries around the world that engage in abusive interrogation techniques. This is about whether we protect American soldiers and American citizens from torture by unequivocally condemning those forms of interrogation. The United States cannot be a country that defends a practice which the civilized world has considered torture for over five centuries.

Democrats are willing to work with the President, in a bipartisan manner, to confirm nominations. But the President's response to the majority leader's work in confirming more than 80 nominations in December by renominating Steven Bradbury last month is not encouraging. If the President truly wants to confirm his nominations, he should not be pouring coffee and tea at the White House.

He ought to have his Chief of Staff, Mr. Bolten, pick up the phone and say: Let's get down to business. There are important Democrats and Republicans who can be appointed tomorrow if the President will understand that the entire fate and future of his administration should not hang on this one nominee, Steven Bradbury, who has been implicated in some of the most questionable practices of this administration. I hope the President and his Chief of Staff, after they have had their coffee with these potential nominees, will pick up the phone and work with us for the right result.

I yield the floor.

The PRESIDING OFFICER (Mr. MENENDEZ). The Senator from Alabama.

Mr. SESSIONS. Mr. President, I would like to share some thoughts on the FISA legislation. It is critically important, and we need to pass the Intelligence Committee bill.

I will first say, in response to my able colleague from Illinois, that General Hayden's comments in which he indicated three people had been subjected to waterboard torture are something we ought to think about. First, I am glad, as he said and has been repeated, waterboarding was only used three times early on after 9/11 against some of the most dangerous people we have ever dealt with.

As a result of the debate and discussion about that, we had an amendment on the floor of the Senate, which Senator KENNEDY offered to the Military Commissions Act in 2006, to prohibit waterboarding. It failed 46 to 53. We have a statute that does prohibit torture—Congress passed it overwhelmingly and it was supported by Senators KENNEDY, LEAHY, BIDEN, and others—that defined torture as infliction of severe physical or mental pain or suffering. I am glad we are no longer utilizing waterboarding. I hope we never have to do it again.

I just want to say to my colleagues, be careful how you portray the United States around the world.

Mr. Goldsmith, who has been quoted here and previously testified before our committee, has written a book. He said this war on terror has been the most lawyered war in the history of the Republic. Lawyers have been involved in everything. Great care has been given to ensure the law was followed. To compare waterboarding of 3 individuals to what was done to American prisoners by the Japanese in World War II is just unthinkable. To date, not a single prisoner whom we have captured in the War on Terror has died, to my knowledge, in American custody—maybe or one or two from some disease, but certainly not from abuse.

I just finished reading the book ''Hells Guest'' by Mr. Glenn Frazier from Alabama, a Bataan Death March survivor. About 90 percent of those prisoners died. They starved to death. They were beaten on a regular basis and abused in the most horrible way.

To even compare what was done to American soldiers wearing a uniform lawfully being a combatant to what has been done to a few people without any physical or permanent injuries is not fair. It is part of a rhetoric designed for political consumption at home that has embarrassed our country around the world and led decent people around the world to believe our military is out of control and we are systematically abusing and torturing prisoners when it is not so. We ought to be ashamed of ourselves to go on again and again about it.

We continue to be confused. Our country faces very real dangers. Terrorists are determined to damage this country. It is not just talk. We know it is true. They have done it before. They have attacked us around the world. They attacked us repeatedly before 9/11, and they desire to destroy our country.

Our administration made a decision after 9/11 that we could not treat these kinds of military attacks, designed to destroy our country by organized foreign forces, as normal law enforcement. I was a former Federal prosecutor. In a criminal prosecution, you try to catch people after they have committed the crime. But these acts are so horrible that the nature of them is such that they are acts of warfare and not crimes, and they need to be treated in that fashion. We remain somewhat confused about it. So the old policy meant you would investigate after the crime was committed. It was basically a stated or implicit policy of the Clinton administration. We cannot return to that kind of strategy.

One of the most important legal powers and authorities we have to defend America is the Foreign Intelligence Surveillance Act. It has played a key role in preventing subsequent attacks on U.S. soil for the last 6 years. We are dealing with very real, very imminent threats, and we must continue to assist the fabulous military and intelligence personnel who are working this very moment long hours to protect our Nation.

I have visited our National Security Agency and met with the people who gather the intelligence under this act. They love America. These are not people who are trying to harm our country and deny us our liberties. They are sterling individuals who carefully follow the rules we give them. They follow the rules. They say they cannot continue effectively to do their job unless we pass this legislation. They cannot continue to do what they need to do.

The terrorists waging war against our country do not fight according to the rules of warfare, international law, moral standards, or basic humanity. They have even, in recent days, apparently used mentally ill women as suicide bombers, setting off bombs that have resulted in the deaths of other people, as well as the poor people who had the bombs strapped to them.

So, historically, we have provided the protections of the Geneva Conventions only to those whose conduct falls within the rules of war, those who fight under a flag of a nation, who wear uniforms against other organized military units. However, under a twisted rationale, predicated on the belief by some that we are not fighting a real war, we have given more rights to these individuals, who flatly reject any rule of war, than we have provided to legitimate prisoners of war who have followed the rules of war. We have done that in a number of different instances—it is sort of amazing to me—including providing them with habeas corpus relief to go to Federal court. These are not traditional prisoners of war, but prisoners who are unlawful enemy combatants. So we have endangered, sometimes I really believe, not only our troops, who put themselves in harm's way—and are in harm's way right now—to carry out the policies we gave them, but innocent Americans here at home.

We have to keep this threat in the forefront of our minds. These are individuals dead set on the destruction of our country at any cost. There is nothing they will not do.

Let me state that the FISA law should be made permanent. It should not merely be extended with another sunset provision. It is a fallacious argument to claim we cannot revisit a law unless there is some sunset when it ends. As Members of this Congress, it is incumbent upon us to continually review legislation we pass to ensure that the laws are accomplishing the goals set forth and that no unintended consequences occur. There is no sound reason to pass critical legislation such as the Protect America Act and slap an expiration date on it.

Fighting the war on terror is a long-term enterprise that requires long-term institutional changes. As the Vice President said in a recent speech:

> The challenge to the country has not expired over the last six months. It won't expire any time soon, and we should not write laws that pretend otherwise.

The Intelligence Committee bill is a collaborative, bipartisan compromise that was crafted in consultation with members of the Intelligence Committee, the Director of National Intelligence, the Department of Justice, and the intelligence community after months of negotiation and review of highly sensitive information, most of which was classified, secret, about the current surveillance procedures and how they were being used by the Government to obtain critical national security information. We cannot overstress that the committee most intimately involved with this process and the electronic measures being utilized voted their bill out by an overwhelmingly bipartisan 13-to-2 vote.

Remember, it has been over 6 years 4 months since the terrible attacks of September 11, and we may be most thankful that not one attack has been carried out on our soil since that day. As we move further from that dreadful day, I fear our memories have begun to fade. Otherwise, there is no sound justification for doing anything other than reauthorizing the Protect America Act, which would allow the intelligence community to simply continue, uninterrupted, their work which has been protecting this Nation and can continue to protect it in the future.

After the intelligence Committee passed a bill, the Senate Judiciary Committee, of which I am a member, got involved and produced a partisan bill. We already voted to table the partisan Judiciary substitute, and we debating the bipartisan Intelligence Committee bill. Let me point out, however, something that happened in the Judiciary Committee. The bill produced by

the committee was given very little process during one committee meeting where 10 Democratic amendments were accepted along a strict party-line vote, and the bill itself, ultimately, was voted out with only Democratic support. No Republican voted for it. It was a purely partisan bill.

Strikingly, the one vote that garnered bipartisan consideration was against an amendment that was offered by Senator FEINGOLD to strip the retroactive liability protections found in section 2 of the Intelligence bill.

We had a discussion and vote on whether the liability protections to keep the companies that helped us and responded to Government requests—whether they should be sued for doing so—should be stripped from the bill. We voted in the Judiciary Committee, 12 to 7, to follow the recommendation of the Intelligence Committee bill that they passed 13 to 2, and keep the limited liability protections. So it was a 12-to-7 vote to defeat the Feingold amendment that would have removed those liability protections.

Directly after that vote, however—it was curious how it all happened—but directly after that vote, Chairman LEAHY moved to report only Title I of the Judiciary substitute bill out of Committee. When that passed, that effectively stripped the liability protection provisions the committee had just voted to keep.

The point is that the Democratic-controlled Judiciary Committee, when voting directly on removing retroactive liability, voted 12 to 7 to keep it. But by the time we passed out the Judiciary Committee's version of the bill, we had taken it out. I'm not sure people fully understand how that occurred, but it certainly was an odd thing that it passed out of committee without liability protection, when we specifically voted to keep that language in the overall bill.

Now, the main area of disagreement is over this important question that will be coming up, I understand, in the amendment offered by Senator DODD, amendment No. 3907—and a Specter-Whitehouse amendment that will allow substitution—which will, in effect, allow litigation to continue against telecom companies that responded to the requests of the Attorney General of the United States, certified by the President. So our disagreement is whether we should provide these good corporate citizens who cooperated with a formal written request by the Attorney General of the United States, certified by the duly-elected President of the United States, to provide information for a surveillance program implemented shortly after the attacks on September 11—and at that point in time, we did not know how many terrorist cells there were in the country and what plans they may have had.

Now, the nature of the program is highly classified, but after an uproar of complaints, the procedures were studied carefully by Congress, and we reacted by giving approval to the program in passing the Protect America Act overwhelmingly last August. I did not want to be too lighthearted about it, but I remember all the brouhaha that this program was somehow wrong and had to be eliminated, and people made all these unsubstantiated allegations. But after we went in great depth, we found, as Mr. Goldsmith said, that the lawyers have been on top of this since day one. It was a carefully constructed program. A court opinion issues last spring caused us to not be able to continue the way it was being done, and the Intelligence community asked us for legislation so it could continue. The Congress passed the Protect America Act this summer, but it was a short-term bill that lasted only 6 months.

All I would want to say is, nobody apologized to President Bush or the Attorney General of the United States or the people at the National Security Agency for all the bad things they said about them. After having studied what they did, we concluded it is constitutional and legal and proper and necessary, and we actually passed a law to authorize it to continue.

But still, there have been over 30 lawsuits now filed against telecom providers for their alleged participation in the terrorist surveillance program—30 lawsuits. Analysis of these lawsuits leads only to the conclusion that the plaintiffs are substituting speculation and a fevered brow for fact and are ignoring the dangerous consequences these lawsuits can have on our national security.

I do not know who is actually filing these lawsuits. I will just say this, parenthetically: Last October, before the last election, Lancet magazine produced a report—a medical magazine in England—that said 500,000 to 700,000 Iraqis were killed by the American military in Iraq. And ABC, CBS, and our Democratic colleagues all raised cane that, unbelievably, we would kill this many people. After the election was over—and by the way, the guy who wrote the report said he wanted to be sure it came out before the election—we learned some things about it.

In a fabulous article in the National Journal, an unbiased magazine, they detailed the fraudulence of that article, and pointed out that even an antiwar group said, at most, it was 50,000, not 500,000 or 700,000. And where did they find out the money for the Lancet article came from? George Soros, and the MoveOn.Org crowd. The ''blame America first'' crowd. Well, I don't know who is actually funding these lawsuits. We ought to ask some questions about it. Certainly there is no indication that anybody's liberties have been impacted adversely.

If these suits are allowed to continue, we face a number of problems. The sources and methods relied on by our intelligence community to conduct surveillance are highly classified, and if these lawsuits are allowed to proceed, even allowing for the Government to be substituted for the telecom companies, we run the risk of exposing the things our enemies really want: classified national security information. Make no mistake, if forced to defend themselves against lawsuits brought about because they cooperated with a government request certified to be legal, companies will certainly hesitate or refuse outright to cooperate in the future. Even where substitution by the Government is an option, we would be putting national security decisions in the hands of corporate counsels in the future whose duties—and their first responsibilities—extend to the stockholders of their company, and not the national security.

If we ask a company to help us, do we want all the lawyers in that company to say: Wait a minute. The last time we worked with you government we got sued, and we are going to review all of this because some court may hold this—or George Soros may fund some lawsuit and tie us up in court. We don't think we want to help. I think they would naturally take that tack in the future to resist cooperation.

During floor debate in December, the distinguished chairman of the Intelligence Committee, our Democratic colleague Senator ROCKEFELLER, said this. This is what he said about the matter:

> Our collective judgment—

and he is talking about the Intel Committee members—

> Our collective judgment on the Intelligence Committee is that the burden of the debate about the President's authority should not fall on the telecommunications companies—

In other words, the debate about whether the President had authority to do this shouldn't fall on the telecommunications counsels—

> because they responded to the representations by Government officials at the highest levels that the program had been authorized by the President and determined to be lawful and received requests, compulsions to carry it out. Companies participated at great risk of exposure and financial ruin for one reason, and one reason only: in order to help identify terrorists and prevent follow-on terrorist attacks. They should not be penalized for their willingness to heed the call during a time of national emergency.

Senator ROCKEFELLER said that.

The ranking member of the Judiciary Committee who favors substitution has stated this, flat out:

> The telephone companies have acted as good citizens.

Certainly they have. In many instances, the Government must seek assistance from the private sector and private individuals to help protect our national security and even local security in our communities. In order for this practice to continue, we must allow them to rely on assurances that the assistance they provide is not only legal but essential to protect our national security without fear that they will have their names dragged through

the mud by protracted litigation initiated by the ''blame America first'' crowd which subscribes to wild theories about Government conspiracies to deny people their liberty. They are forgetting the safety of America, and they are ignoring sound legal precedent.

Some in this body sincerely believe that liability protection is not needed if these companies did nothing wrong, they say. Well, this is faulty reasoning since either allowing the lawsuits to proceed or substituting the Government will still force them to be a party to lawsuits that run the risk of exposing national security information or doing irreversible financial and reputational damage to companies innocent of any wrongdoing. We are putting these companies in harm's way when they, bound by a sense of patriotism and civic responsibility, participate in a government program that was certified to be legal by the Attorney General of the United States and the President of the United States.

If the Government is substituted—in accordance with one of the theories that has been offered—in the place of a particular company, it will most certainly assert the state secrets privilege, leaving, in effect, the company virtually impotent when it comes to mounting a defense and showing what their legitimate actions were. Due to the nature of this state secrets privilege, a company will be forbidden from making their case and will be left without the ability to even confirm or deny their participation in the program. We should applaud the actions of these citizens, not stab them in the back by suing them for their actions.

To refresh everyone's memory, the Intelligence Committee, after months of negotiation in highly classified settings, rejected an amendment to strip liability protection from the bill for these companies by a vote of 12 to 3. It then passed the bill out in toto by a bipartisan vote of 13 to 2, protecting these companies from lawsuits.

The Judiciary Committee, on the other hand, had one markup after less than 2 weeks of reviewing the Intelligence Committee's legislation, and rejected an amendment specifically that would have denied liability protection by a vote of 12 to 7. So we voted not to allow them to be sued either. Furthermore, the Judiciary Committee rejected an amendment to allow the Government to be substituted for the plaintiffs by a vote of 13 to 5. We rejected substitution too, although the liability protections were ultimately removed from the bill the Judiciary Committee passed.

Even if the Government is substituted, plaintiffs in litigation will seek discovery, they will file depositions and ask for interrogatories and motions to produce. They will seek trade secrets and highly classified technologies. Companies would still face many litigation burdens. They would be—we would be subjecting them to harm, not only from consumer backlash, but their international business partners will be pressured around the world.

Under the limited liability protections incorporated in the Intel bill, plaintiffs seeking to question the Government will have their day in court as it only protects good corporate citizens from civil suit. So the liability protections in this bill do not preclude lawsuits against the Federal Government from going forward. In fact, there are at least seven lawsuits currently pending against the Government that will proceed against the Government or Government officials. This was accepted by the Intelligence Committee. Some wanted to say you couldn't sue the Government for these activities also, but the Intel Committee reached an agreement, an overwhelmingly bipartisan agreement, that would allow those lawsuits to proceed.

The companies that helped the Government did so to help protect us from further attack, and valuable information has been gathered with their help. I have been out to the National Security Agency. I have talked with the people. I know they scrupulously follow the rules we give them, and I know they have gained great, valuable information through this program, and I know they lost very valuable information when the program had to be stopped. This information has saved undoubtedly countless American lives by enabling our intelligence community to thwart attacks.

Some have said this amounts to amnesty, but that couldn't be further from the truth. Amnesty is an act of forgiveness for criminal offenses, such as granting citizenship to people who broke the law to come into our country illegally. The companies were operating under a certification of legality in a time of national danger doing what they could as Americans to follow the law and prevent future attacks. At no point during their participation were their actions illegal. For Heaven's sake. To grant liability protection is to adhere to that great Anglo-American legal tradition for hundreds of years that when called upon by a law officer, with apparent legal authority, wearing a uniform, out on the street, a citizen is not to be held legally liable if, in responding to the officer, the officer was wrong. That is all we are talking about. That is a fundamental, historical, legal principle. The only question—the legal question has always been simply this: whether the citizen was responding to a legitimate request by a government law officer, a police officer to chase a bad guy. Was the citizen acting reasonably in believing this was a legitimate law enforcement request and he was helping by being a good citizen. That is the test. If he participated knowingly with somebody acting illegally, then that citizen could be liable. Certainly certification by the Attorney General and the President of the United States in written documents suffices as a legitimate request.

The bottom line is, we do not need to pass legislation that panders to the extreme interest groups in America who find fault in everything our people do, our law enforcement and intelligence officers, and that fosters a fundamental mistrust of those officials who are working daily to serve all of us. The burden should not fall on the shoulders of good corporate citizens who are acting patriotically to help save lives and protect our country.

I urge my colleagues to vote to support the Intel Committee bill, a carefully crafted, carefully studied, bipartisan bill. I also urge my colleagues to support the liability protections in the Intelligence Committee legislation and a vote against any amendments that attempt to strip these provisions or in any way alter the carefully structured, limited provisions of the bill.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Georgia is recognized.

Mr. CHAMBLISS. Mr. President, I rise today to discuss Senate amendment No. 3907 offered by Senators DODD and FEINGOLD to the Intelligence Committee's FISA legislation. I compliment my friend from Alabama for some very strong, very pointed remarks on this issue as well as the other issues he addressed.

I am pleased the leaders of the Intelligence Committee were able to come up with an agreement on how to proceed on this important legislation. I look forward to the debate on many of these amendments.

A couple of the amendments have been offered relating to title II of the bill which provides immunity to those telecommunication carriers that currently face lawsuits for their alleged assistance to the Government after September 11 and their participation in what is known as the terrorist surveillance program, or TSP. Senators DODD and FEINGOLD have offered an amendment striking this section. Senators SPECTER and WHITEHOUSE have offered an amendment which would substitute the Government as a defendant for the telecommunication providers currently being sued for their alleged support to the President's TSP program. I do not support either of these amendments.

As a member of the Select Committee on Intelligence, I had access to classified documents, intelligence, and legal memoranda, and heard testimony related to the President's TSP program. After careful review, as stated in the committee report accompanying this legislation, the committee determined:

> That electronic communication service providers acted on a good faith belief that the President's program, and their assistance, was lawful.

The committee reviewed the correspondence sent to the electronic communications service providers stating that the activities requested were authorized by the President and determined by the Attorney General to be

lawful, with the exception of one letter covering a period of less than 60 days in which the counsel to the President certified the program's lawfulness. The committee concluded that granting liability relief to the telecommunications providers was not only warranted but required to maintain the regular assistance our intelligence and law enforcement professionals seek from them.

Although I believe the President's program was lawful and necessary, this bill makes no such determination. This is not a review or commentary on the President's program; rather, it is a statement about how important this assistance by the electronic communication providers is to our Government.

I cannot understate the importance of this assistance—not only for intelligence purposes but for law enforcement purposes also. The Director of National Intelligence and the Attorney General stated:

> Extending liability protection to such companies is imperative; failure to do so could limit future cooperation by such companies and put critical intelligence operations at risk. Moreover, litigation against companies believed to have assisted the Government risks the disclosure of highly classified information regarding extremely sensitive intelligence sources and methods.

There is too much at stake for us to strike title II and substitution is not an acceptable alternative. This week, we have been alternating between legislation geared to helping our taxpayers and FISA. Yet substituting the Government in these lawsuits will force the American taxpayer to front the heavy legal bills associated with this legislation.

Substitution would allow these trials to continue and could risk exposure of classified sources and methods through the discovery process in the litigation. As a defendant in these frivolous lawsuits, the Government may be required to expose some of our most sensitive intelligence sources and methods. Let me emphasize the committee already found that these communication providers acted in good faith under assertions from the highest levels of our Government that the program was lawful. If an individual alleges he or she has a claim due to this program, that claim can be brought against the Government and should not be brought against the providers. The Intelligence Committee bill left open the option for Americans to sue the Government. An aggrieved individual may sue the Government and attempt to prove standing and a cause of action. However, substituting the Government doesn't shield our American business partners from these cases, nor does it relieve them of the liability to their stockholders they may unjustly face and which may be borne out in our economy. Substitution only increases the risk of leaks, and these potential revelations only make our enemies better informed on the tools we have to conduct electronic surveillance.

Some of my colleagues have complained about access to the documents regarding the President's program. It is true many Members of Congress have not had access, nor have they had an opportunity to review these documents. There is a good reason for that. These documents are highly classified and represent details about intelligence sources and methods. I worry that expanding the number of people who have access to these documents will increase the likelihood that intelligence will get leaked into the public. It is more appropriate that the oversight committee review and report back to the Senate on the various intelligence activities of the United States. That is why the Senate has an Intelligence Committee. As a member, I am familiar with handling classified material and receiving classified briefings. I have made commitments to safeguard the information I learn behind closed doors within the Intelligence Committee. Given the wide array of information I have heard on the Intelligence Committee, I question the benefits a Member would gain from such a limited, yet specific, review of the operations of our intelligence community. Rather, I urge my colleagues to support the determination of the Intelligence Committee, which is charged with regularly reviewing the intelligence activities of the United States and oppose the amendments offered by Senator DODD and Senator FEINGOLD. Providing our telecommunications carriers with liability relief is the necessary and responsible action for Congress to take. The Government often needs assistance from the private sector in order to protect our national security and, in return, they should be able to rely on the Government's assurances that the assistance they provide is lawful and necessary for our national security. As a result of this assistance, America's telecommunications carriers should not be subjected to costly legal battles.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. ISAKSON. 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. ISAKSON. Mr. President, I ask unanimous consent that I be allowed to address the Senate as in morning business.

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

ECONOMIC STIMULUS

Mr. ISAKSON. Mr. President, we are on a very important piece of legislation, and I thank Senator BOND for all his hard work, and other members of the Intelligence Committee. I hope we can very soon pass a good FISA bill on the floor.

I want to deviate from that debate for a second to talk about a headline many of my colleagues read yesterday, and that we are all reading repeatedly around the United States, and that is the rapid increase in the number of houses going into foreclosure. I want to address that in the context of the economic stimulus package and in the context of a possible recessionary tendency in the economy, and also from a historical perspective, in that we have been down this road before, and suggest there is an action the Senate and the Congress could take, and the White House could endorse, that could avoid an awful lot of foreclosures, improve the housing market, reverse the tendencies toward recession, and be a private sector solution to a problem that is going to be a tremendous burden if we don't act.

I understand the short-term surgical benefits of the stimulus that was passed by the House, the other benefits that the Finance Committee passed. We will work ourselves through that in the next few weeks, and shortly thereafter the American people will more than likely be receiving a check of $300 or more with which to infuse some energy into the economy. But while that is going on, these numbers of a 200-percent and 300-percent increase of houses going into foreclosures are going to materialize into houses in foreclosure.

When we get into the second quarter of this year and the middle of the summer, we are going to find ourselves in a difficult situation where the following has happened: a tremendous number of houses foreclosed on, the banks and lenders taking back inventory—and there is a term called REO, real estate owned—and the regulators coming in, looking at their books and telling them to get rid of that inventory. The lenders are going to then write them down, take them to the marketplace with deep discounts, and sell them.

Now what that is going to do to your homeowners Jim Weichert sells to in New Jersey, mine in Georgia Harry Norman sells to, and those from all around the country, is those people who are in houses making payments and they are in good shape, their value is going to plummet because of the number of foreclosures that is flooding the market. What happens is the equity, the difference between their existing mortgage and the value of the house, decreases because the value of the house goes down. If they are like 87 percent of the American people who have an equity line of credit, where they use the equity in their house as a line of credit, if you will, their available credit is going to be squeezed.

You know what is going to happen then? They are going to stop spending. When that happens, we will have the full pressure of the economy in a downward spiral, and it begins to feed upon itself. That is precisely what happened in 1975.

In 1973 and early 1974, there was a great housing boom in the United States, like we have had over most of

the last decade. And like what happened over most of the last decade with subprime loans and underwriting, back in 1974, money got awfully loose. Banks made loans with very little underwriting criteria, and we had a plethora of new homes built all over the United States by newfound homebuilders who had a hammer, a pickup truck, and easy credit. We found ourselves at the beginning of 1975 with a 3-year supply of vacant housing on the market in the United States. A viable real estate market is a 6-month supply. So you had six times the volume of houses that would be considered a balanced market, and we went into a deep recessionary spiral.

A Democratic Congress and a Republican President passed a $6,000 tax credit available to any family who purchased a standing vacant house in inventory, and that allowed them to collect that credit over 3 years—the 3 succeeding tax years after the year of their purchase. The only thing they had to do, other than qualify for their loan, and qualify under good qualifying standards, is they had to occupy the home as their residence. In a 1-year period of time, we absorbed a 2-year supply of housing and returned the housing market to balance and the economy stabilized. Although we had the impacts of the oil embargo, which was causing problems with inflation, the economy returned to a relatively stable time period.

I, along with a number of Members of the Senate, have introduced legislation—Senate bill 2566—which takes that model from 1975 and applies it to our problem in 2008. What it very simply does is, it offers a tax credit of $15,000 for the purchase of any house that falls in the following category: a new house permitted before September 1 of last year that is standing and vacant; a house owned by a lender that was foreclosed on in the last 12 months from an owner occupant; and any house pending foreclosure owned by an owner occupant who is willing to sell. That is where all this inventory that is beginning to flood our market comes from. The tax credit would be available if the purchase was made between March 1 of this year and February 28 of next year. So there is a 1-year window to incentivize those who may be reluctant to go in the marketplace to do so.

The Joint Tax Committee has scored this, and guess what the score is—$9.1 billion over 5 years. Put that in the context of the stimulus package that is before us of $150 billion to $160 billion. It is a relatively small inducement to provide a private sector solution to what is about to become a huge burden to the taxpayers of the United States and this Government.

I come to the floor at this time in hopes that some of our colleagues who have not found an interest in this legislation yet will take a look at it. As the author, it is not original thought. I happened to have been a real estate broker in 1975 trying to hang on and make a living to educate my three children, and I saw my Government come to the rescue of the housing economy through energizing people to go in and purchase houses that were in trouble, rather than bail them out somewhere down the line, and it worked. The cost to the Government was infinitesimal, yet the benefit to the public was astronomical.

I hope, as we finish talking about a surgical, strategic, short-term stimulus to get the consumer buying, which is what we are talking about in terms of either the Senate Finance Committee bill or the House bill, we take a look at what is coming. Because, believe me, in July of this year, if we do nothing, we are going to be dealing with a housing supply in this country bigger than it has ever been, with vacant houses by the thousands in neighborhoods, declining values on the value of housing, and people who are in good shape are not going to be able to either have their equity line of credit work or be able to move their house in the marketplace because of the tremendous inventory available.

History is a great teacher both in terms of things you should never repeat but also in terms of things that work and you should repeat again. I would submit the tax credit to qualified individuals to purchase and occupy a troubled house in this economy is an incentive that worked not only for the betterment of the market but for the betterment of our economy and in the best interest of the United States. Senate bill 2566 is an opportunity for us to join together to do something good and right for the American people.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

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

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

ECONOMIC STIMULUS

Mr. REED. Mr. President, across the Nation, millions of Americans are struggling to make ends meet as our economy has slowed dramatically. In December, I spoke on this floor about how President Bush has presided over a period of divided prosperity in the United States, where a privileged few have done remarkably well but the rest of us have been trying to get by. For most working people, the trademark of the Bush administration and their economy is wage stagnation. Indeed, in my home State, real median wages have not increased since 2000.

Rhode Islanders are coping not only with flat wages but increasing prices in critical commodities they must consume. Energy, education, and health care have all gone up. In January, in Rhode Island, gas was $3.11 cents a gallon; heating oil costs in the Northeast are projected to be at least $2,000 this year, which is about a $400 increase from last year. These price increases would be difficult to manage even in good times, but again paychecks for most working families have not kept up. In fact, they have been flat.

With prices accelerating, wages flat, and a huge gap in the capacity of middle-income working Americans to keep up and try to get ahead, the subprime crisis is real. This housing crisis is having huge and devastating effects. Two years ago, most of our constituents, the vast majority of them, were sitting around the table thinking: Well, when my daughter is ready to go to college in 2008, we will go ahead and borrow from the house to provide the extra income she will need to go ahead and make it through college. A lot of those families now are recognizing they can't do that. They are more concerned about a health care incident, because, unlike a few months ago, there is no reservoir in the value of their house to cushion the blow of unexpected expenses.

So this housing crisis, together with this wage stagnation, together with increased prices for energy and health care and education, and so many other things, is putting middle-class Americans in a vise and squeezing them.

We have to do much better. The Joint Economic Committee and others have estimated some of the costs already in terms of this mortgage-related foreclosure crisis. In my home State, they think $670 million will be lost to the family incomes of Rhode Island from 2007 through the end of 2009.

These economic conditions are being felt across the country. They are not localized warnings. The weakness in housing has spread to all parts of our Nation and across our economy. Growth in the fourth quarter of last year was .6 percent compared to a 4.9-percent increase in the third quarter.

We are slowing down, moving into a recession. Yesterday the market, Wall Street, went down over 300 points, largely due to a very weak report of a survey on the service sector. We have known for many months now that the manufacturing economy was having difficult times, but the service sector was holding up a bit.

Yesterday, there was a chilling indication the service sector has also contracted. The market took the news very badly. The market also took the news very badly a few days ago, when we showed a loss of 17,000 jobs, the first time we have actually lost jobs in more than 4 years.

Again, the administration's performance in terms of creating jobs has been less than stellar, barely keeping up with the new entrants into the labor market on a monthly basis. Now, for the first time in more than 4 years, we have lost jobs.

Furthermore, the average length of unemployment is increasing from 16.6 weeks in December to 17.5 weeks in January. More people are losing jobs and it is harder to find a new job.

Yesterday, the Federal Reserve released a survey of senior bank loan officers who indicated that the credit

crunch is spreading from consumer loans into the commercial and industrial loan sectors and that foreign banks are tightening their lending terms, in fact, even more so than some U.S. financial institutions.

Taken together, it clearly shows Wall Street is going into what one analyst called a recession panic mode and many economists are seeing signs that weaknesses in our economy are spreading internationally. In fact, one investment banker today, in a speech reported on the Internet, suggested that in the credit markets fear has overtaken greed, creating a situation of near panic in many respects.

So there is no doubt we have to act quickly on this stimulus package, not only to inject needed spending power into the economy to try to revive our consumer sector but also to signal to the American public we will act decisively to try to moderate, if not head off, the effects of a pending recession.

We have, I think, a lot to be grateful for in the work of Senator BAUCUS and Majority Leader REID and Senator GRASSLEY in terms of taking a House proposal and increasing it with important provisions, such as expanding the eligibility criteria for income tax rebates, including 20 million seniors and 250,000 disabled veterans.

The package we are considering also includes $10 billion for a temporary extension of unemployment insurance and $1 billion of emergency funding for the Low-Income Home Energy Assistance Program, the LIHEAP program. Both of these initiatives are targeted to families, seniors and low-income households, and they would help jump-start the economy.

Economists agree these programs among others are a good use of taxpayer money. Last week before the Budget Committee, Alan Blinder from Princeton University and Mark Zandi of Moody's Economy.com both recommended that unemployment insurance and LIHEAP be included in the stimulus package. They also included other elements, but at least these elements are part of the list they feel will provide a bang for the bucks we are going to invest in the economy.

They meet the three T test—timely, targeted, and temporary.

Now, Friday's disappointing jobs report showed that the ranks of the unemployed are unfortunately growing. Nonfarm payrolls actually decreased, as I said, by 17,000 workers last month. In fact, even President Bush acknowledged ''troubling signs in the economy.''

So given these facts, I was surprised to hear Treasury Secretary Paulson say yesterday, in testimony before the Finance Committee, that he does not support including unemployment benefits in the stimulus package because national unemployment is only 4.9 percent, which is not historically high.

What we want to do is take preemptive action to prevent the situation from further deterioration. We want to move now so we do not see unemployment rates climb, so we do not see the duration of unemployment continue to grow, so that we give Americans a real chance to get back to work; and if they are not back to work, then at least we provide something to sustain them in these difficult moments.

In Rhode Island, my home State, we have reached a very high unemployment rate, 5.5 percent. Many other States are creeping up there too. We should, I think, move quickly, move decisively and support the Senate Finance package.

We are also beginning to see that unemployment insurance provides a very good return on the investment. Mark Zandi, the economist I mentioned before, indicated that for every dollar the Government spends on unemployment insurance, it adds $1.64 to the national GDP. In other words, it leverages the investments we are making.

So contrary to what some have talked about as excessive spending, this is exactly the targeted, temporary, timely spending that will accelerate, not decelerate, the economy.

The stimulative effects of unemployment insurance will get more money into the hands of people who will spend it right away in their local communities, which is generally the whole purpose of our stimulus approach.

Moreover, providing these benefits to these individuals will give them not just some dollars but a sense, I hope, of hope, that their Government is responding to their concerns and that we will respond in the future, if necessary.

Making the long-term unemployed eligible for a temporary extension of an additional 13 weeks at this time also makes good sense and is the right thing to do. Two weeks ago, I wrote a letter to the majority and Republican leaders asking that they include unemployment insurance in the stimulus package, and 26 other Senators joined me.

Senators DURBIN and KENNEDY have long led the fight on this issue. I commend them for their efforts. I hope unemployment insurance is part of the final package we are able to vote out of this body.

Now, there is another aspect of the package we will consider later today, I hope; that is the LIHEAP support. We have seen a huge increase in energy costs. On average, Americans are spending about 11 percent more to heat their homes this winter. For Rhode Islanders who rely on heating oil, that is about 39 percent higher than last year in terms of their heating oil expenses.

We know that the timely, targeted, and temporary aspects of stimulus have to be met. LIHEAP will do this. It is timely because it will be delivered very quickly. We have a delivery mechanism in place. It is also something that will fund families, low-income families, who desperately need this money.

I do not have to belabor the point that today, around the kitchen table, people are figuring things out. They are thinking, first of all, they probably need to take off sending their first born or their second or third child to the expensive school; that may be off the table for a few years. But they are also talking very basically about which bills to pay this month? Do we pay our mortgage? Do we pay the energy bill? Do we pay the credit cards which we are using to buy food at the supermarket these days?

I mean, these are the debates American families are having. They are not talking in terms that we are here, such as what is the best macroeconomic policy or how we can delay these expenditures, they are talking in terms of a real crisis in the family. We have to respond. One way we can respond quite clearly is with this LIHEAP money because that will go to one of their major concerns: How do we keep the heat on in the Northeast for the next several weeks and month; and in the Southwest, in anticipation of the grueling temperatures down there in the summertime, too. This additional money will provide an advance payment on cooling problems in the Southeast and the South, parts of the country that will soon encounter warm temperatures, not cold temperatures, which cause their energy costs to rise.

Again, these are the households who need LIHEAP. And so we know we have a program that works in LIHEAP. If we can deliver additional resources, it will get to the families who need it, particularly seniors, it will get out immediately. It will add to the stimulus effect because as the economists—both Mr. Blinder and Mr. Zandi—pointed out, it will leverage our investment in the economy.

So with the escalating costs for energy I would urge my colleagues that we go ahead and accept this amendment, particularly the funds for LIHEAP. I urge us all to support the Senate Finance Committee package, a package that provides for greater coverage to seniors and disabled American veterans and also provides unemployment insurance for those who desperately need it and heating assistance for, again, the families who desperately need it.

I hope that today, not only good sense, good economic sense, but a sense of our obligations to the most vulnerable in this country will persuade us to support this package strongly.

The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent to speak for up to 10 minutes and then for Senator CRAPO to have up to 10 amendments to speak on the FISA bill.

The PRESIDING OFFICER. Is there objection?

Mr. BOND. Mr. President, reserving the right to object, I think our colleague is going to speak in morning business. But I will be happy to yield to the Senator from Texas.

The PRESIDING OFFICER. Is there objection?

Mrs. HUTCHISON. Was there an amendment?

Mr. BOND. If we can yield to the Senator from Texas for 10 minutes on the bill, the Senator from Idaho for morning business, and then go to a Member on the majority side of the aisle.

I believe there is a consensus developing for the unanimous consent request I have proposed.

The PRESIDING OFFICER. Would the Senator repeat his unanimous consent request.

Mr. BOND. Ten minutes to the Senator from Texas on the FISA bill, 10 minutes in morning business for the Senator from Idaho, and then a member of the majority side will be recognized for whatever he or she wishes to do.

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

The Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, I do rise to speak on the FISA bill, which I certainly support, and also to oppose some of the amendments that will be coming forward.

I hope very much that we will be able to start voting on amendments, because we now have an agreement for voting on amendments, and I hope we can clear the FISA bill in due course and in short order. It is important because there is a deadline.

We are going to see the capability for our law enforcement officials and our intelligence officials, to monitor calls between known terrorists and suspected terrorists, whether it is into our country, or out of our country from foreign countries, we need to have this capability continue.

We have it right now. The Senate passed a good bill about 6 months ago. It has now been extended. But we do have a deadline, and the deadline is on us in the middle of this month. So we do need to pass this bill. We need to make sure the technology of the day is covered by the foreign intelligence surveillance act and subject to the security needs of our country.

There are amendments that would take away the immunity for telecommunications companies that allegedly cooperated with intelligence officials.

One amendment, No. 3907, would strip the immunity from the bill completely. The Intelligence Committee is the key committee that has looked at all of the information and assessed the need for the ability to survey known terrorists and suspected terrorist helpers in our country and in foreign countries. It is important that we allow our intelligence agents to go to telecommunications companies and get the help they need to do this kind of surveillance. Amendment No. 3907 would take away immunization for companies that may have cooperated with government requests.

The telecommunications companies allegedly assisted the intelligence community because of the need to assure that plots against our country and our citizens were uncovered before they are implemented. Now we have the potential for catastrophic liability from a number of lawsuits, and some of my colleagues want the country to turn away from providing protection for these companies. We will not allow these companies the freedom to provide the evidence in court because the intelligence community says the evidence is too sensitive to be allowed in court. We put the telecommunications companies in a situation in which they cooperate. They are sued. But they don't have the ability to defend themselves in court because they cannot produce the evidence. It is untenable, and I hope we will reject such an amendment.

There is another amendment that would allow the Government to be substituted for the telecommunications companies as the defendant when they are sued. The problem with this amendment is that the companies would still have to spend thousands of hours and millions of dollars on these lawsuits. They would have to subject their employees to depositions. They would need to participate in evidence gathering and the discovery process, which will drain their resources in an unnecessary lawsuit in which they would be peripheral.

There is yet another amendment that would grant the immunity after review by the FISA Court. While certainly well intentioned, there are some problems with giving this to a court that doesn't have the capability to process this kind of request. They don't have statutory procedures. They don't have the administrative capacity to receive witnesses, to hear evidence, or to carry out the major provisions of the amendment.

Furthermore, it is unclear that there is appellate authority from the immunity related rulings of the FISA Court this amendment creates. The FISA Court has operated in secret and has been more of an administrative court processing warrants. So this would put the court in a whole new administrative mode for which there are no precedent or appropriate regulations. There does not appear to be an appellate process from the FISA Court once it decides whether or not to grant a company immunity.

I respect the work of my colleagues. They are trying to find good-faith compromises. However, I put my faith in the Intelligence Committee. This is a committee that passed this bill, with immunity provisions in it, out of committee by a vote of 13 to 2. It was bipartisan. This is the committee that had the hearings, heard all of the evidence, and knows more about the processes than people who are not on the committee. They have spent a considerable amount of time reviewing the materials in these cases, including the Government's legal justifications for the program. We need to respect the judgment and expertise of our committees, particularly the intelligence committee. This is a committee that has done a very good job on a bipartisan basis to assure that we continue to protect our intelligence capabilities and to shield the companies necessary to gathering intelligence information from unfounded lawsuits.

I hope my colleagues will vote for the bill the Intelligence Committee produced. Protecting the American people is our ultimate responsibility. This bill is absolutely essential for that responsibility to be implemented. We must protect the American people. We must protect the companies that have helped our law enforcement and intelligence-gathering agencies. We must make sure we proceed with a vision of foreign surveillance that would protect the American people from future attack.

It is not an accident that we have not been attacked since 9/11. All of us know that our country was not prepared for this kind of warfare. But our country's eyes have been opened. We have been a sleeping giant in many ways, as was said about us before World War II. But we have now been awakened, and we are going to take the measures necessary within the framework of our Constitution, which this bill provides, to assure that we protect the American people from future attack.

I yield the floor.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Idaho is recognized for 10 minutes as in morning business.

SECURE RURAL SCHOOLS AND COMMUNITY SELF-DETERMINATION ACT

Mr. CRAPO. I thank the Senator from Texas and my colleagues on both sides for allowing me this few minutes to have a break in the debate on the FISA bill to discuss a very important issue to the people of Idaho and, frankly, to the people in rural communities throughout the country. I rise to talk about the need to reauthorize the Secure Rural Schools and Communities Self-Determination Act of 2000 and to fully fund the payments in lieu of taxes, or the PILT payments, which we call them in Congress. I encourage my colleagues to make this overdue extension and funding a top priority for Congress in the coming days.

This year marks the 100-year anniversary of the passage of the act requiring the U.S. Forest Service to return 25 percent of its gross receipts to the States to assist counties that are home to our national forests and other Federal lands with school and road services. This program was put into place to compensate local governments for the tax-exempt status of national forests which we all enjoy. Otherwise, many rural communities that neighbor these beautiful national treasures are unable to fully meet the school and road needs of their communities.

One hundred years ago, the impact of large Federal forest reserves on neighboring local economies was discussed and debated on the floor of the Senate, as former Idaho Senators Weldon B.

Hayburn and William Edgar Borah joined their Senate colleagues in debating this issue which remains an issue today. However, the unfortunate reality of today is that in recent years, timber receipts have eroded to the point that the Federal obligation to our local communities is simply not being met. The receipts are not adequate for the needs of the communities and have been dropping off dramatically. Congress has acted in recognition of this to ensure that communities have the necessary assistance.

In the year 2000, I joined with my colleagues, Senators LARRY CRAIG, RON WYDEN, GORDON SMITH of Oregon, and many others to support and secure enactment of the Secure Rural Schools and Communities Self-Determination Act of 2000. This law provided the necessary assistance known as county payments to communities where regular Forest Service and Bureau of Land Management receipts-sharing payments had declined so significantly. The assistance has prevented the loss of essential school and road infrastructure needs in our local rural communities. The law also enabled very significant forest improvement projects.

The best solutions to natural resource challenges are achieved through local collaboration, and the more than 70 Resource Advisory Committees—or RACs, as we call them—provided for in this law have created valuable partnerships in carrying out projects to address a wide variety of improvements on public lands. These projects include habitat and watershed restoration, reforestation, fuels reduction, road maintenance, campground and trail enhancements, and noxious weed eradication. At a time when increased public demands are being placed on our Nation's natural resources, the RACs have provided the necessary cooperation to help resolve natural resource challenges throughout these local rural communities.

Additionally, payments in lieu of taxes, known as PILT payments, have augmented county payments to provide local governments with the means of offsetting a part of the tax revenues they lose because of the tax-exempt status of these Federal lands in their jurisdictions. PILT payments have supported community services such as firefighting and police protection in rural communities. Through PILT, the Federal Government partners with counties to provide public lands the stewardship and community services they need. Unfortunately, PILT funding is also not meeting this obligation, and we need to work together in Congress to achieve full and adequate PILT funding.

I am proud of the largely bipartisan effort in the 110th Congress to extend the Secure Rural Schools and Community Self-Determination Act and to fully fund PILT. Progress has been made but more needs to be done to achieve the Federal Government's commitment to these communities.

In March of 2007, the Senate overwhelmingly passed an amendment which I cosponsored to the fiscal year 2007 emergency supplemental appropriations act to reauthorize county payments for 5 years with offsets. However, this language was replaced with a 1-year extension, with the final payments made at the end of December 2007.

In December last year, Senators MCCASKILL, CRAIG, SMITH, DOLE, MURKOWSKI, STEVENS, and BENNETT joined me in urging the Senate leadership to attach a reauthorization of county payments and PILT funding to any legislative vehicles expected to be enacted before Congress concluded its work last year. Unfortunately, the reauthorization was attached only to the energy package which also would have increased taxes on domestic oil and gas producers to pay for incentives for renewable power, energy efficiency, electric vehicles, and other technologies.

I support incentives for alternative energy resources and the extension of county payments, but I am opposed to paying for those incentives by increasing taxes on our domestic oil and gas production. We are facing real and increasing constraints on our energy supply, resulting in higher energy costs daily. We simply cannot meet those needs by decreasing conventional energy production in the United States, which would further our dependency on foreign energy supplies and dramatically increase the cost for gasoline and electricity. This would negatively impact communities across the Nation, not just the rural communities we are seeking to help.

We need to again turn our attention to focusing on the reauthorization of the Secure Rural Schools legislation and increasing and achieving full and adequate PILT funding. It is unfortunate that the county payments extension was dropped from the enacted Energy bill and was not included in other legislative vehicles before the end of last year. However, today is another day. As we embark on the second session of this Congress, we have every opportunity to work together to extend and fund county payments and fully pay for PILT payments for students in rural areas. We must do this to prevent the closure of numerous isolated schools and to enable rural county road districts to address severe maintenance backlogs.

Time is of the essence for many rural communities across the Nation, and this important legislation impacts millions of students and their families in more than 4,000 school districts and more than 7,000 counties. I am hearing from Idaho communities that, absent an extension, personnel layoffs as a result of program closures are expected soon. Communities in more than 40 States are facing similar pressures.

Just as the economic impact of Federal land ownership on neighboring rural communities has not been worn away by time, neither has this Nation's responsibility to the States worn away. It is my hope that others will join me in working to meet this Federal responsibility by reauthorizing the Secure Rural Schools Act and providing the full funding for PILT. This must be achieved in a timely manner that prevents the cutoff of needed services in rural communities nationwide and provides some long-term certainty to those rural communities.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I ask that I be given unanimous consent to speak on the underlying bill.

The ACTING PRESIDENT pro tempore. Without objection, the Senator is recognized.

Mr. ROCKEFELLER. Mr. President, I say to the Presiding Officer that far and away the most contentious issue in this FISA debate is whether private companies that assisted the Government in implementing the President's warrantless surveillance program should be provided liability protection.

Three amendments will be offered that relate directly to this issue.

First, Senators DODD and FEINGOLD have an amendment that would strike all of title II of the underlying bill—that is, S. 2248—on liability protection as reported by the Intelligence Committee.

Second, Senator SPECTER will offer an amendment—I think at 3:30—that provides for a different remedy; namely, the substitution of the U.S. Government itself for the carriers in the lawsuits that have been filed against the carriers.

Third, Senator FEINSTEIN has prepared an amendment that would keep the basic structure of title II—to wit, liability immunity—but would have the courts, rather than the Congress, determine whether carriers relied in good faith on the representation made to them by the executive branch of our National Government.

I will address the particulars of each amendment as it is offered, but first I would like to describe the background behind the Intelligence Committee's approach to this whole issue of immunity.

Critics have suggested that providing liability protection for telecommunications companies is akin to congressional endorsement of the President's warrantless surveillance program. I understand the passion stirred by this issue. Rather than consulting with Congress or the courts, the President created a secret surveillance program—no question about that—based on very dubious legal reasoning. That was unnecessary, that was unwise, that would, therefore, cause passions and suspicions.

But anger over the President's program should not prevent us as a deliberative body from addressing the real problems the President has created.

Because of the lawsuits over the program and the damage to the telecommunications companies' reputations, companies that were once willing to help the Government, based on assurances of legality from the highest levels of Government, may now be questioning that assistance.

Let's reflect on that for a moment. These are corporations. They have no names at the present time. They have to make money. The Government comes to them, as they have in the past on much smaller matters, and with the authority of the President saying, this is in the national interest; with the legal advice of the Attorney General saying, this is legal; and then the Director of the National Security Agency sending out letters that say, we require you, we compel you, we request to you—or other words—that you cooperate with us.

People say: Well, they cooperated. Of course they cooperated right after 9/11. I think anybody who is in the intelligence business understands what I am saying. There is no difference between the day after 9/11 and this day in terms of the threat to our country or those who are planning, plotting to do us harm.

The fact that no attacks have happened does not excuse the sense of relaxation on the whole subject—perhaps the congressional sense of relaxation on the whole subject. We need to continue this intelligence collection.

What is it, I am wondering, that the telecommunications companies get from this? What prestige? What large amount of money? What praise? What do they get from this? Do they get good public relations? No. They get 40 lawsuits, most of which are not based on anything to do with the TSP program. In other words, they are picked out of newspapers. People are dissatisfied, and class action suits arise.

So maybe they have been sued $10 billion. Maybe they have been sued $40 billion. We will not speculate on that at the present time. But in that they are corporations and in that they have no reward at all for doing this service for their country—which we call patriotism, and then cast that aside because that must mask some evil intent—they go ahead and they do it. Then, since they are corporations, their shareholders get extremely unhappy about it, which could be happening at the present time, and then they decide that maybe they will be less willing to do this. Several have done that. Several at the beginning did that.

Now, corporations are in business also to make a profit. The corporations that are involved in this are doing nothing but losing prestige, losing reputation, have angry shareholders. And I ask myself, what is it they get out of doing this, because people, particularly on my side of the aisle, are sometimes inclined to be suspicious of corporations, that they have some kind of a purpose behind all of this. Nothing could be further from the truth. They are losing. They are being criticized. They are being sued. It is costly. It takes away from their energy to carry out their other missions. It is not a situation in which a whole bunch of people are sitting around in these corporate headquarters discussing this, because only a very few people are allowed to know, and they have criminal sanctions against them if they tell anybody, should they have received any of these instructions from the Government.

So we are not talking about people here trying to undo the safety of the United States or to gain some kind of advantage for themselves. If this intelligence collection stops, I say to the Presiding Officer, we will be in a very sorry situation. I do not know how to say that more sincerely, more deeply felt, more based upon exhaustive study, including numerous meetings in committee with these folks and other meetings outside.

So they have been told it is legal, and by the National Security Agency Director they have been required, compelled, and in other words, some of which are quite strong, to do it. So they do start to do it, and they are paying one heck of a price for it.

What price are we paying? We are paying no price because they are still doing it. What price might we pay should they stop—because they are corporations, and they are responsible to their shareholders—if they should stop this type of activity? The price we would pay would be overwhelming. Without the cooperation and assistance of private companies—not compliance forced by a court but true cooperation—this country's law enforcement and intelligence agencies cannot obtain the information they need to protect this country. It is a fairly heavy statement to make. I chair the committee. I am not naive on these matters. I make that statement again. Without the cooperation and assistance of private companies, this country's law enforcement and intelligence agencies cannot obtain the information they need to protect this country.

Making the question of liability protection a proxy for disagreement with the President's program is, therefore, shortsighted, in this Senator's view, ignoring the reality that the Nation and future Presidents will depend on the assistance of these same companies for years to come.

In analyzing the question of liability protection, the Intelligence Committee sought to weigh these very real concerns about future intelligence collection against the possible outcome of lawsuits. We discussed it at length. Understanding this issue requires some background on the lawsuits that have been filed.

Currently, providers are subject to approximately, as I indicated, 40 civil lawsuits, some of which are class actions, which seek billions of dollars of damages—and I have given you a range—for privacy violations based on the companies' alleged provision of assistance and information to the intelligence community. The suits are based—many of them—on media reports about all sorts of intelligence activities. Many of them are not limited to the warrantless surveillance program disclosed by the President. That is ironic, but it is a heavy burden for the companies. If suits are brought that have nothing to do with the warrantless surveillance program disclosed by the President, they are out of order. But, as I will proceed to explain, the companies can never explain to a court that they are out of order. Although these suits involve different types of legal claims that are in varying stages of litigation, they share a common reality: that the Government has refused to publicly reveal the classified documents and information that would allow them to proceed.

The current fight in the courts is, therefore, not about whether damages should be awarded, whether the underlying program is legal or even whether any company participated in the President's program in good faith. Instead, the parties are fighting about access to classified information about the President's program. I have not heard that much discussed in this Chamber. This litigation could continue for years without a court ever addressing the underlying issues about the legality of the program. We seek wrongdoing whether, as some say, it is in the corporate boardroom or, as others would say—as I would say—in the halls of Government.

I stress the point: No court is likely to resolve the question of whether the President or any private company violated the law in the near future.

Some of my colleagues have argued that without these lawsuits, the public will never learn the details about the President's program. But litigation is highly unlikely to tell the story of what happened with the President's program. Too many of these facts dealing with intelligence sources and methods remain appropriately classified, and the executive branch is highly unlikely to agree to declassify additional information if it could affect the ongoing litigation.

Thus, the litigation is unlikely to result in a ruling in the near future about the legality of the conduct of the President nor any private company, nor, for that matter, the public disclosure of any additional information about the President's program. Instead, it is possible the cases, as I indicated, will continue for years as the courts debate whether information must be disclosed.

In the meantime, however, as I mentioned, the litigation poses a serious risk to U.S. intelligence collection. That is my job and that is the job of the committee I chair and the job of the chairman of the Intelligence Committee in the House. We are not about being courts, we are about trying to balance civil liberties as best as we can

with the ability of this country to collect an entirely different kind of intelligence that we were so busy doing recently in the Cold War era. Without the assistance of telecommunications providers, our intelligence community simply cannot obtain the intelligence it needs.

Is that a serious statement? Do Members of the Senate concern themselves with that? Is this just me, this Senator, standing up making a statement trying to win some votes? Or is there the possibility it could be true? If there is a possibility—and I think it is a probability it is true—then I don't understand why people can be confused on this subject because I think the choices are clear. Allowing companies to be dragged through the court system because of their alleged cooperation with the Government encourages them not to cooperate with any request, even those that are clearly legal without court compulsion. It also sends a message to all private companies: cooperate with the U.S. Government at your peril. Is that a bit of an overstatement? In the corporate boardrooms around this country, my guess is that is the discussion. Very few corporations have the capacity to help the Government in the way telecommunications companies do.

Discouraging private sector cooperation with the Federal Government is not, in the feeling of this Senator, the right long-term result for either the intelligence community or the American people.

Many have argued that providers who act unlawfully should be held accountable. I totally agree that all Americans, including corporate citizens, must follow the law and be held accountable for their failures. Companies that deliberately seek to evade privacy laws or legal restrictions on electronic surveillance can and should be subject to civil suit, but that is not the issue here, I would say to the Presiding Officer. That is not the issue.

The Intelligence Committee spent a lot of time, as I have indicated, this year looking into what happened over the past 6 years. Before deciding to provide liability protection for the companies, the Intelligence Committee heard testimony from relevant witnesses and carefully reviewed the written communications provided to participants in the program.

Participants were sent letters, all of which stated the relevant activities had been authorized by the President and all but one—and that was done by the legal counsel to the President—of which stated the activities had been determined to be lawful by the Attorney General of the United States. Shouldn't private companies be entitled to rely on the written representations of the highest levels of Government officials that their cooperation is necessary and has been determined to be lawful? Can you argue that if they get those notifications from the NSA Director and it has been approved by the Attorney General and has been declared essential for the national interest by the President, should they instead say: Oh, well, we don't care about that. That is not our business. We are not going to do that.

And isn't it reasonable to assume that a U.S. citizen who has been told the Attorney General has found their cooperation to be lawful is acting in good faith? If they have been through this process and they proceed to act on it, why is it so easy to stipulate they are not acting in good faith? How does one show that? How does one imagine that?

I have been through this, this whole question of what the companies get from it, and it is the thing that bothers me so much. They get nothing but grief. They get suits. They get costs. They get a diminished reputation. They begin to pull away. Their shareholders lose confidence. Do they get money? No. They get nothing. So why would they want to continue to cooperate would be my question.

The answer to these questions are at the heart of the Intelligence Committee's determination that it is essential that Congress protect private companies that assisted the Government after the terrorist acts of 9/11.

Mr. President, I will complete this part of my presentation and yield the floor. I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that at 3:05 p.m. today the Senate return to the Cardin amendment No. 3930, with the time from 3:05 until 3:15 equally divided and controlled in the usual form; that the Senate then proceed to vote in relation to the amendment, with other provisions of the previous order remaining in effect.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. BOND. No.

Mrs. FEINSTEIN. Mr. President, reserving the right to object, I wish to secure the ability, following this vote, to call up one of my amendments, if I might. My understanding is that maybe I can do it now.

Mr. ROCKEFELLER. This is a total of 10 minutes or less amendment, but we will not start until 3:05. The Senator can call it up.

Mrs. FEINSTEIN. All right.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

The Senator from California is recognized.

AMENDMENT NO. 3910 TO AMENDMENT NO. 3911

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the present amendment be set aside in order for me to call up amendment No. 3910 on FISA exclusivity.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from California [Mrs. FEINSTEIN], for herself, Mr. ROCKEFELLER, Mr. LEAHY, Mr. NELSON of Florida, Mr. WHITEHOUSE, Mr. WYDEN, Mr. HAGEL, Mr. MENENDEZ, Ms. SNOWE, and Mr. SPECTER, proposes an amendment numbered 3910.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To provide a statement of the exclusive means by which electronic surveillance and interception of certain communications may be conducted)

Strike section 102, and insert the following:

SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH ELECTRONIC SURVEILLANCE AND INTERCEPTION OF CERTAIN COMMUNICATIONS MAY BE CONDUCTED.

(a) STATEMENT OF EXCLUSIVE MEANS.—Title I of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by adding at the end the following new section:

''STATEMENT OF EXCLUSIVE MEANS BY WHICH ELECTRONIC SURVEILLANCE AND INTERCEPTION OF CERTAIN COMMUNICATIONS MAY BE CONDUCTED

''SEC. 112. (a) Except as provided in subsection (b), the procedures of chapters 119, 121 and 206 of title 18, United States Code, and this Act shall be the exclusive means by which electronic surveillance (as defined in section 101(f), regardless of the limitation of section 701) and the interception of domestic wire, oral, or electronic communications may be conducted.

''(b) Only an express statutory authorization for electronic surveillance or the interception of domestic wire, oral, or electronic communications, other than as an amendment to this Act or chapters 119, 121, or 206 of title 18, United States Code, shall constitute an additional exclusive means for the purpose of subsection (a).''.

(b) OFFENSE.—Section 109 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1809) is amended—

(1) in subsection (a), by striking ''authorized by statute'' each place it appears in such section and inserting ''authorized by this Act, chapter 119, 121, or 206 of title 18, United States Code, or any express statutory authorization that is an additional exclusive means for conducting electronic surveillance under section 112.''; and

(2) by adding at the end the following:

''(e) DEFINITION.—For the purpose of this section, the term 'electronic surveillance' means electronic surveillance as defined in section 101(f) of this Act regardless of the limitation of section 701 of this Act.''.

(c) CONFORMING AMENDMENTS.—

(1) TITLE 18, UNITED STATES CODE.—Section 2511(2) of title 18, United States Code, is amended—

(A) in paragraph (a), by adding at the end the following:

''(iii) If a certification under subparagraph (ii)(B) for assistance to obtain foreign intelligence information is based on statutory authority, the certification shall identify the

specific statutory provision, and shall certify that the statutory requirements have been met.''; and

(B) in paragraph (f), by striking '', as defined in section 101 of such Act,'' and inserting ''(as defined in section 101(f) of such Act regardless of the limitation of section 701 of such Act)''.

(2) TABLE OF CONTENTS.—The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by adding after the item relating to section 111, the following:

''Sec. 112. Statement of exclusive means by which electronic surveillance and interception of certain communications may be conducted.''.

Mrs. FEINSTEIN. Mr. President, I voted for this FISA legislation in the Intelligence Committee. I indicated then that I had some concerns about it. I filed additional views with respect to the need for stronger exclusivity provisions. Then the Judiciary Committee reported out a bill that included its view with respect to strengthening the fact that the Foreign Intelligence Surveillance Act would be the exclusive manner in which electronic surveillance against Americans could be conducted.

The Judiciary bill subsequently failed on the floor of the Senate. The amendment I have at the desk is essentially the exclusivity language from that Judiciary Committee amendment. It has several cosponsors: the chairman of the Intelligence Committee, Mr. ROCKEFELLER; chairman of the Judiciary Committee, Mr. LEAHY; Senator NELSON of Florida; Senator WHITEHOUSE; Senator WYDEN; Senator HAGEL; Senator MENENDEZ; Senator SNOWE; and Senator SPECTER.

As filed this is an amendment that only covers exclusivity. In the interim period, the vice chairman of the Intelligence Committee approached me about the possibility of a modification of the amendment that would allow the administration to be able to operate outside of FISA for a time.

We have not been able to come to terms on that amendment. I could not agree to the length of time that Mr. BOND proposed, which was 45 days plus an additional 45 days, for a total of 3 months, enabling the administration to operate without a FISA warrant.

The fact is, since January of 2007, the entire Terrorist Surveillance Program has operated within the confines of the Foreign Intelligence Surveillance Act and under orders from the Foreign Intelligence Surveillance Court. That is, I believe, as it should be.

I have a modification to my exclusivity amendment that would limit the period of time outside of FISA following a declaration of war, an authorization for the use of military force, or a major attack against the nation to 30 days. The question is whether I would have unanimous consent from the vice chairman to be able to call up that modification of my amendment. But that has not been given to me yet.

So at this time, I am going to rest my case on the exclusivity amendment, and I will have an opportunity, I hope, to argue it later.

I would now like to call up my amendment, No. 3919.

The PRESIDING OFFICER (Mr. SANDERS). Amendment No. 3910 is pending.

AMENDMENT NO. 3919 TO AMENDMENT NO. 3911

Mrs. FEINSTEIN. Mr. President, I wish to make another amendment pending, so I ask unanimous consent to set aside the pending amendment and call up amendment No. 3919. This is the FISA Court review of immunity amendment. This is my second amendment which is part of the unanimous consent agreement. I do this just to get it before the body.

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

The clerk will report.

The bill clerk read as follows:

The Senator from California [Mrs. FEINSTEIN], for herself, Mr. NELSON of Florida, and Mr. CARDIN, proposes an amendment numbered 3919 to amendment No. 3911.

The amendment is as follows:

(Purpose: To provide for the review of certifications by the Foreign Intelligence Surveillance Court)

On page 72, strike line 13 and all that follows through page 73, line 25, and insert the following:

(6) FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The term ''Foreign Intelligence Surveillance Court'' means the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)).

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

SEC. 202. LIMITATIONS ON CIVIL ACTIONS FOR ELECTRONIC COMMUNICATION SERVICE PROVIDERS.

(a) LIMITATIONS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, and subject to paragraph (3), a covered civil action shall not lie or be maintained in a Federal or State court, and shall be promptly dismissed, if the Attorney General certifies to the court that—

(A) the assistance alleged to have been provided by the electronic communication service provider was—

(i) in connection with an intelligence activity involving communications that was—

(I) authorized by the President during the period beginning on September 11, 2001, and ending on January 17, 2007; and

(II) designed to detect or prevent a terrorist attack, or activities in preparation for a terrorist attack, against the United States; and

(ii) described in a written request or directive from the Attorney General or the head of an element of the intelligence community (or the deputy of such person) to the electronic communication service provider indicating that the activity was—

(I) authorized by the President; and

(II) determined to be lawful; or

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

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

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

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

(3) DETERMINATION.—

(A) IN GENERAL.—The dismissal of a covered civil action under paragraph (1) shall proceed only if, after review, the Foreign Intelligence Surveillance Court determines that—

(i) the written request or directive from the Attorney General or the head of an element of the intelligence community (or the deputy of such person) to the electronic communication service provider under paragraph (1)(A)(ii) complied with section 2511(2)(a)(ii) of title 18, United States Code, and the assistance alleged to have been provided was provided in accordance with the terms of that written request or directive;

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

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

(B) PROCEDURES.—

(i) IN GENERAL.—In reviewing certifications and making determinations under subparagraph (A), the Foreign Intelligence Surveillance Court shall—

(I) review and make any such determination en banc; and

(II) permit any plaintiff and any defendant in the applicable covered civil action to appear before the Foreign Intelligence Surveillance Court pursuant to section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803).

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

(iii) CERTIORARI TO THE SUPREME COURT.—A party to an appeal under clause (ii) may file a petition for a writ of certiorari for review of a decision of the Foreign Intelligence Surveillance Court of Review issued under that clause. The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

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

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

Mrs. FEINSTEIN. I ask that the amendment be set aside.

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

The Senator from Maryland.

AMENDMENT NO. 3930

Mr. CARDIN. Mr. President, shortly we will be voting on the amendment I offered that provides for a 4-year sunset in the Foreign Intelligence Surveillance Act.

I thank first Senator ROCKEFELLER for his help, Senator LEAHY, Senator

MIKULSKI, Senator KENNEDY, and others who have been instrumental in making sure that we have provisions in this bill so that we continue our congressional oversight.

This amendment is not unusual. Every major change in the FISA law has been accompanied by a sunset. When we passed the PATRIOT Act, we had a 4-year sunset on most of the provisions. When we revised it, we had a 3-year sunset on the most controversial provisions. When we passed the Protect America Act, we had a very short sunset on it because we were not certain we were getting it right.

This change is controversial. If my colleagues think it is not controversial, look at all the debate that has taken place on the floor of this body. We want to make sure that we get it right.

It is interesting that as we get close to the time when Congress has to act, we seem to get a lot more cooperation from the executive branch of Government. The sunset will ensure that we get the type of cooperation we need to carry out our responsibilities, to get the documents we need to make sure we get it right.

As I pointed out, technology is changing quickly. I think a 4-year period is reasonable for us to take a fresh look at this issue.

This is not a question of whether we should have a sunset in the bill. There is a 6-year sunset in the bill. So why is it so important to have a 4-year sunset versus a 6-year sunset? The answer, quite frankly, is we want the next administration that is going to take office in January to focus on this issue and work with us so they can operate collectively with the authority of Congress and the laws we pass in the executive branch. It is important that the next administration focus on this issue, and that is why this amendment is particularly important.

My friend from Missouri pointed out that this is an election year. No, it is not. The sunset provision would terminate in December of 2011, so it is a year before the elections. I think it is the right time for a sunset.

I know the administration does not want any sunset in this bill. I understand that. As I pointed out before, they don't want any congressional oversight. They don't even think they need congressional laws on this subject. They don't even think they need a Congress. But we have our responsibility, and I hope we would want this issue revisited during the next administration. I urge my colleagues to support the amendment.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, we have discussed this issue before on the floor. I urge my colleagues to vote against this amendment. As I have stated previously, the current bill, the Protect America Act, had a 6-month sunset on it only because we were not able to bring a full, complete FISA modernization bill to the floor, given the failure of Congress to act. We had been requested in April, May, June, and July to change the law. This is a bill that should establish a permanent operating authority for the intelligence community and the private partners who work with it.

As part of the compromise we reached in passing the bill, I did not believe we should have a sunset, but we agreed on a 6-year sunset. That was part of the deal. The 6-year sunset at least gives us certainty over the 6 years in time, that both the intelligence agencies, our private partners, and our allies abroad who depend upon us would have time to make this system work.

The problem we face is that any sunset withholds from our intelligence professionals and the private partners the certainty and the permanence they need to protect Americans from terrorism and other threats to national security.

Attorney General Mukasey has said there are no fatwahs with limitations by the terrorist leaders who seek to do us harm. They put out orders to keep trying to kill us, and these are not going to go away. There should be no sunset on this bill.

I disagree very strongly with my friend from Maryland that Congress is an important part of this. We passed a good bill that adds far more protections than Americans have ever had in intelligence collection. This bill is a good bill, but I can assure him that we have a strong bipartisan committee and a strong staff that will continue to oversee, supervise, and watch the surveillance to make sure it works. If we find it does not work, we should not wait for a 4-year sunset or a 6-year sunset. We should make those changes when they are needed.

We can see how long we have had to fight to get this authorization through. There was no action from the majority from April, May or June, until the very end of July. We put this bill out on the floor in October. We could not get the bill up in December because of filibusters. We had to get another 15-day extension so it would not expire.

We can act on the bill any time we need, but we cannot deprive our partners, our intelligence community, and our allies the protection if Congress cannot work.

I yield time to the distinguished chairman of the committee.

Mr. ROCKEFELLER. I say to the Presiding Officer, I find myself in disagreement with my vice chairman. I originally wanted 4 years and we went to 6 years because of accommodations that yielded other results. In the wisdom of the joint Intelligence Committee and Judiciary Committee, settling on 4 years makes a lot of sense. I urge the adoption of the amendment.

Mr. KENNEDY. Mr. President, the amendment that Senator CARDIN has offered is very simple, but it is absolutely critical to this bill. The amendment would move up the bill's sunset date from 6 years to 4 years. Congress would need to revisit the law by the end of 2011 instead of 2013.

The amendment is good public policy. Whenever a significant new law is enacted, it is important to require Congress to revisit it at an earlier rather than a later date.

The FISA bill we are considering is highly complicated legislation affecting Americans' security and liberty. It grants the executive branch vast new authority for electronic surveillance at a time of rapidly changing technology and rapidly changing threats. Even the country's leading national security experts cannot say for sure what our national security challenges will look like in 3 years, much less how this legislation will work out in practice.

This is also highly controversial legislation. I don't need to remind anyone in this Chamber of the intense debate that has been taking place over many parts of this bill. The FISA rules on electronic surveillance affect every American. They are the only thing that stands between the freedom of Americans to make a private phone call, send a private e-mail, or search the Internet, and the ability of the Government to listen in on the call, read the e-mail, and review the Internet search.

In this information age, FISA gives Americans basic protection against Government tyranny and abuse, and we owe it to the American people to revisit it promptly to make sure its protections are effective.

Congress also needs an earlier sunset because we need more information to assess how these new policies will work in practice. The ongoing confusion and controversy in this area mean that Congress does not have enough knowledge or confidence to be sure the legislation is adequate.

With an early sunset, Congress will have to make an early assessment of how the legislation is being interpreted and implemented. We will be able to identify problems and abuses much sooner. If changes are made to the law in 2011, it will be because experience has shown that changes are needed.

We passed this exact same amendment in the Judiciary Committee in the middle of November, and in the weeks since then, I have heard only two arguments against it, both from the White House. Neither of them holds up.

The first objection is that there has already been sufficient consideration of these issues, so that Congress should be able to pass a permanent FISA reform right now. Everyone agrees that short sunsets are valuable when Congress has not had time to consider an issue thoroughly and develop a factual record. But the Bush administration claims there has already been a detailed and informed discussion of FISA modernization.

That objection is wrong on the facts. The administration has recently started to work with Congress more openly, but there is still a great deal we don't know about how it has been conducting its electronic surveillance. Much of what we have learned has come from leaks to the press.

A few months ago, the White House decided to share with the Senate certain documents on the role of the telecommunications companies in an effort to obtain retroactive immunity for them. This was the first time the administration had ever shown Congress any documents on its warrantless surveillance. So far, however, the White House has shared only a small number of documents with a small number of Senators—and until late last month, not with any Members of the House of Representatives. Such selective disclosure is a pale shadow of the real disclosure Congress needs to enact good legislation.

That objection is also wrong as a matter of policy. No matter how much discussion there may have been, this is highly complicated legislation that makes major, untested changes in our surveillance laws. It is impossible for Congress to analyze these issues in the abstract, without any track record to evaluate. With a law as complex, new, and important as this, a short sunset is responsible policy.

The second objection I have heard is that a short sunset introduces too much uncertainty to the rules affecting our intelligence professionals. The administration says it is not efficient for agencies to develop new policies and procedures, only to have the law change within a brief period. They say the intelligence community operates more effectively when the rules governing intelligence professionals are well-established, and are not in doubt.

This objection is more serious, but it too dissolves upon consideration. It is true that there may be a little extra uncertainty that comes with a short sunset. But the much more significant uncertainty is whether all of the changes made by this bill will be good for the country—and there is no way to be sure about this ahead of time.

Intelligence professionals should not be locked into a surveillance system that doesn't work well for them, and Americans should not be locked into a system that fails to protect their security or their rights. The early sunset guarantees that Congress will review these extremely complicated, untested, and powerful new authorities and how they are actually being used by the executive branch.

The administration's argument against a sunset is an argument against congressional oversight of FISA. The White House wants Congress to pass a new FISA law, and then to look the other way while the executive branch implements and interprets its new powers. They want Congress to trust them when they tell us how the law is working, rather than look into it ourselves.

Given this administration's track record of warrantless illegal spying, ''trust us'' is not an acceptable way to proceed. Congress needs to stay on top of this issue to make sure that our surveillance laws are keeping Americans safe and protecting their freedom. That is what we have been elected to do, and that is what the Constitution requires us to do.

As I said at the start, this amendment is very simple. It moves the sunset date up by 2 years. Yet it may well be the single most important thing Congress can do to ensure that we reform FISA in a responsible and effective way.

This sunset amendment is a win-win for national security and civil liberties. It will ensure that Congress remains engaged on the crucial issues of electronic surveillance that affect all Americans. To make sure that our new FISA law actually gets the job done, I urge my colleagues to adopt this amendment.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. CARDIN. Mr. President, let me briefly summarize the comments Senator BOND made. It is true that the terrorist groups do not have any types of restrictions on what they can do. They do not have any legislature. They do not have any courts. They do not have any constitution. They have no respect for human life. They have no civil liberties with which they have to deal. But that is what makes this Nation the great nation it is. It is our responsibility to make sure that we carry out what the people of our Nation expect us to do.

Let me point out that the PATRIOT Act, when it was passed, had a 4-year sunset. Then we reauthorized some of the provisions, but we kept a 3-year sunset. We have used sunsets that have been shorter, and on controversial laws, a 4-year sunset is the minimum we should have.

I urge my colleagues to understand that it is important that the next administration work with us so we never get back to where we are this year, where the executive branch is heading in one direction and we don't know what they are doing. Let's work together so we can keep Americans safe, having the administration work with us next year so we understand what they are doing, they have our support and, if necessary, we modify the laws to give them the tools they need to keep America safe.

I urge my colleagues to support the amendment.

Mr. BOND. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. There is 1 minute 10 seconds remaining.

Mr. BOND. Mr. President, this is a great nation because we have kept our country safe. We have kept our country safe, and we are working very closely with the intelligence community. That is why we have a good bill. The intelligence community says we must have the certainty at least of 6 years. I wanted to see none. That is why we came to an agreement in the Intelligence Committee and a 13-to-2 vote said we should have this bill with a 6-year sunset.

We have a solid bipartisan product addressing civil liberties concerns, while making sure the intelligence community has the tools and authorities it needs to keep us safe.

As I said, this was an important part of our compromise to get the bill through. Our intelligence collectors and troops on the battlefield need certainty, not rules that will expire in 4 years. That is why both the Director of National Intelligence and the Attorney General strongly oppose shortening the 6-year sunset in the bill.

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

The PRESIDING OFFICER. The Senator from Maryland.

Mr. CARDIN. Mr. President, quickly, in closing, I thank the chairman of the Intelligence Committee for his support of this amendment. This amendment does nothing to jeopardize the bipartisan work of the Intelligence Committee. It preserves the appropriate role of the legislative branch of Government, and I would hope all my colleagues would want to support that change to make it clear that the next administration must come back to Congress.

With that, Mr. President, I yield back the remainder of my time, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

Mr. BOND. Mr. President, there is a 60-vote agreement on this.

The PRESIDING OFFICER. That is correct.

The question is on agreeing to amendment No. 3930. The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from New York (Mrs. CLINTON) and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from North Carolina (Mr. BURR), the Senator from South Carolina (Mr. GRAHAM), and the Senator from Arizona (Mr. MCCAIN).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 49, nays 46, as follows:

[Rollcall Vote No. 7 Leg.]

YEAS—49

Akaka	Casey	Kerry
Baucus	Conrad	Klobuchar
Bayh	Dodd	Kohl
Biden	Dorgan	Landrieu
Bingaman	Durbin	Lautenberg
Boxer	Feingold	Leahy
Brown	Feinstein	Levin
Byrd	Harkin	Lincoln
Cantwell	Inouye	McCaskill
Cardin	Johnson	Menendez
Carper	Kennedy	Mikulski

Murray	Reid	Tester
Nelson (FL)	Rockefeller	Webb
Nelson (NE)	Salazar	Whitehouse
Obama	Sanders	Wyden
Pryor	Schumer	
Reed	Stabenow	

NAYS—46

Alexander	DeMint	Murkowski
Allard	Dole	Roberts
Barrasso	Domenici	Sessions
Bennett	Ensign	Shelby
Bond	Enzi	Smith
Brownback	Grassley	Snowe
Bunning	Gregg	Specter
Chambliss	Hagel	Stevens
Coburn	Hatch	Sununu
Cochran	Hutchison	Thune
Coleman	Inhofe	Vitter
Collins	Isakson	Voinovich
Corker	Kyl	Warner
Cornyn	Lugar	Wicker
Craig	Martinez	
Crapo	McConnell	

NOT VOTING—5

Burr	Graham	McCain
Clinton	Lieberman	

The PRESIDING OFFICER. Under the previous order requiring 60 votes for the adoption of this amendment, the amendment is withdrawn.

The majority leader is recognized.

Mr. REID. Mr. President, I move to reconsider the vote and table that motion.

The motion to table was agreed to.

CONGRATULATING SENATOR INOUYE ON HIS 15,000TH VOTE

Mr. REID. Mr. President, 2LT DANIEL K. INOUYE distinguished himself by extraordinary heroism in action on April 21, 1945, in the vicinity of San Terenzo, Italy.

While attacking a defended ridge guarding an important road junction, Second Lieutenant INOUYE skillfully directed his platoon through a hail of automatic weapons and small arms fire in a swift and enveloping movement that resulted in the capture of an artillery and mortar post and brought his men to within 40 yards of the hostile force.

Emplaced in bunkers and rock formations, the enemy halted the advance with crossfire from three machine guns. With complete disregard for his personal safety, Lieutenant INOUYE crawled up the treacherous slope to within 5 yards of the nearest machine gun and hurled two grenades, destroying the emplacement.

Before the enemy could retaliate, he stood up and neutralized a second machine gun nest. Although wounded by a sniper's bullet, he continued to engage other hostile positions at close range until an exploding grenade shattered his right arm.

Despite the intense pain, he refused evacuation and continued to direct his platoon until enemy resistance was broken and his men were again deployed in defensive positions.

In the attack, 25 enemy soldiers were killed and 8 others were captured. By his gallant, aggressive tactics, and by his indomitable leadership, Lieutenant INOUYE enabled his platoon to advance through formidable resistance and was instrumental in the capture of the ridge.

Lieutenant INOUYE'S extraordinary heroism and devotion to duty are in keeping with the highest traditions of military service and reflect great credit on him, his unit, and the U.S. Army.

Mr. President, Members of the Senate, these are the words that describe the actions of heroism of Senator INOUYE, when, as a young man, he put his own safety aside for others. As a result of that he was awarded America's highest honor for gallantry and heroism, the Medal of Honor.

The reason I bring this to everyone's attention today is that we have a lot of new Senators. I want every one of them to know this man DAN INOUYE is a man who was born to be a hero. He never thinks of himself but of others. In my 25-plus years in Congress, that is how I have found him to be.

I rise to express joy and honor for my friend and colleague Senator INOUYE on the occasion of his 15,000th rollcall vote, which was just completed.

DAN INOUYE was born to Japanese-American immigrants in Honolulu, the eldest of four children. Did he ever set an example—he sure did—for his siblings. On the day of the Pearl Harbor attack, with chaos reigning, and being only 17 years old, he volunteered to provide medical help to the injured, and there were a lot of injured. After high school, he wanted to become a medical doctor. At the time the U.S. Army banned Japanese Americans from becoming soldiers. The war broke out, but this ban was dropped, and as a teenager, DAN INOUYE immediately put his medical ambition aside and signed up to serve his country in the military. Perhaps it was fate that DAN INOUYE joined the legendary 442nd regimental combat team which in no small part, thanks to his bravery, became the most highly decorated unit in the history of the U.S. Army.

I can't improve the words of praise this great man earned upon receiving the Medal of Honor for his courageous service. I read that. But I think we all here recognize we serve with a very extraordinary human being. While he was recovering from his injuries—and it was more than his arm; his whole body was hurt and, as a result he spent years in a military hospital—in the military hospital, he met another wounded warrior, a man named Bob Dole. They recuperated together, both having severe arm injuries, among other things. The only injuries you could see with Senator Dole and Senator INOUYE were the arms. But, of course, their injuries were much more severe than that. While there, Senator Dole told Senator INOUYE, both to be Senators: I am going to run for Congress. Senator INOUYE beat him there by a few years. That chance encounter began a lifetime of friendship that took these two wounded warriors from hospital beds in Battle Creek, MI, to seats in the Senate. The friendship and close working relationship they have shared is emblematic of Senator INOUYE's lifelong commitment to bipartisanship in the pursuit of progress.

In his decades of public service, Senator INOUYE has been a leader on issue after issue of concern to the American people. As chairman of the Subcommittee on Defense Appropriations, he is the leading expert and national advocate for national security, strengthening the military, and honoring our troops and veterans.

As the first person of Japanese descent to serve in the Senate, DAN INOUYE is a soft-spoken trailblazer.

On a personal level, I was a very new Senator and he had made a commitment to do a fundraiser for me in Florida. He didn't know at the time he made this commitment that there would be other things that would be in the way of that. There was a little thing in the way, his wife's birthday. She understood. He understood. And he, because he had made a commitment, made the personal sacrifice and came down there. I have never forgotten that. That is why when he sought a leadership position in the Senate, I was the first to stand in line to support Senator INOUYE. His heroism and extraordinary lifetime of public service are an inspiration to us all.

But on a personal note, Landra and I, and all my colleagues, are so happy and pleased to hear the recent news that DAN and Irene will be married this May. All of us in the Senate family wish them happiness and joy.

The PRESIDING OFFICER. The Republican leader.

Mr. MCCONNELL. Mr. President, the U.S. Senate has been conducting its business here in Washington for just over 200 years. For more than one-fifth of that time, Senator DANIEL INOUYE of Hawaii has been casting rollcall votes. And just now, he cast his 15,000th, making him the fourth most prolific voter in Senate history.

If Senator INOUYE had anything to say about it, I have no doubt the moment would have passed without fanfare. Some Senators make their presence felt by talking a lot or by being flamboyant. DAN INOUYE has always been another sort of Senator.

He is one of only 107 Americans alive today to have received the Medal of Honor for combat bravery. He is the iconic political figure of the 50th State, the only original member of a congressional delegation still serving in Congress. And he has ensured through many years of diligent service on the Defense Appropriations Subcommittee that an entire generation of America's uniformed military has gone well prepared into battle and was well cared for when they returned.

Despite all this, DAN's quiet demeanor and adherence to a code of honor and professionalism has made him a stranger to controversy and to the fleeting fame that often comes with it. He is a man who has every reason to call attention to himself but who never does. He is the kind of man, in short, that America has always been grateful to have, especially in her darkest hours, men who lead by example and who expect nothing in return.

Historians tell us about one of those dark moments early in our Nation's

history, just after the surrender at Yorktown. Hostilities with the British had ended, but America was on the brink of a military coup. Congress had promised to give officers and soldiers back pay, food, and clothing, and hadn't delivered. The situation grew so serious that U.S. officers threatened an armed revolt.

In a meeting at Newburgh, George Washington urged patience. He assured the officers Congress would act justly. And then, with anger and impatience still in the air, he pulled a letter from his pocket from Congress. Staring at it for a few moments with a look of confusion, he reached into his pocket again and pulled out a pair of reading glasses that only his closest advisers had ever seen. ''You will permit me, gentlemen, to put on my spectacles,'' he said. ''For I have not only grown gray, but almost blind, in the service of my country.''

Some of the officers wept with shame. One man's heroism was enough to dissolve whatever hostilities remained. Revolt was averted, peace preserved, and a roomful of men learned that day what it meant to be an American.

More than a century and a half later, after another dark moment in our Nation's history, another roomful of men would learn a similar lesson. The year was 1959, the place was the U.S. Capitol, and a young man named DANIEL INOUYE was being sworn into office.

The memory of a hard-fought war against the Japanese was fresh in many minds as the Speaker, Sam Rayburn, prepared to administer the oath—not only to the first Member from Hawaii, but to the first American of Japanese descent ever elected. Rayburn spoke: ''Raise your right hand and repeat after me . . .''

Here's how another Congressman would later record what followed: ''The hush deepened as the young Congressman raised not his right hand but his left and repeated the oath of office. There was no right hand. It had been lost in combat by that young American soldier in World War II. And who can deny that, at that moment, a ton of prejudice slipped quietly to the floor of the House of Representatives.''

As a young boy growing up in Hawaii, DAN and his friends always thought of themselves as Americans. But after Pearl Harbor, they found themselves lumped together with the enemy. It was one of the reasons so many of them felt such an intense desire to serve. Their loyalty and patriotism had been questioned, and they were determined to show their patriotism beyond any doubt.

At first they weren't allowed to volunteer. A committee of the Army, caving to prejudice, recommended against forming a combat unit of Japanese Americans. But they persisted, and on June 5, 1942, the policy changed.

In reversing the previous order, President Roosevelt said, quote, ''Americanism is a matter of the mind and heart. Americanism is not, and never was, a matter of race or ancestry.''

The overwhelming response of Japanese Americans proved Roosevelt right. Eighty percent of the military-age men of Japanese descent who lived in Hawaii volunteered for the first-ever, all-Japanese-American combat team. And among the 2,686 accepted was an 18-year-old freshman at the University of Hawaii named DAN INOUYE.

The 442nd Regimental Combat Team, the famous ''Go for Broke'' regiment, would become the most decorated military unit in American history. SGT DAN INOUYE was one of its combat platoon leaders. He spent 3 bloody months in the Rome Arno campaign and 2 brutal weeks rescuing a Texas battalion that was surrounded by German forces, an operation military historians often describe as one of the most significant military battles of the 20th century.

After the rescue, Sargeant INOUYE was sent back to Italy, where on April 21, 1945, he displayed ''extraordinary heroism,'' in leading his platoon through tough resistance to capture an important strategic ridge. Crawling within five yards of the nearest machine gun, he destroyed it with grenades, then stood up and destroyed several others machine gun nests at close range—even as a sniper's bullet shattered his arm. Despite the pain, he continued to direct his men until the enemy's retreat, and become one of the most decorated soldiers of the war.

DAN would later spend nearly 2 years in an Army hospital in Battle Creek, MI, and it was there that he met a wounded soldier, as the majority leader mentioned, from Kansas. DAN had always wanted to be a surgeon, but that dream faded away on a ridge in Italy. He decided to ask his friend what he had in mind for a career. Politics was the reply. DAN was intrigued. And many years later, as a freshman in Congress, he wrote a note to Bob Dole, playfully taunting him for not making it here first.

It is fitting that DAN owes his Senate career, in a sense, to a Republican. He has never let narrow party interests stand in the way of friendship or cooperation on matters of real national importance. His friendship with Senator STEVENS is one of the most storied in all of Senate history. And I know I have never hesitated to call DAN when I thought something important was at stake. As DAN has always said, ''to have friends, you've got to be a friend.''

It is a good principle, and it is one he has always lived up to. But it is just one of the remarkable traits that have made him one of America's great men.

On the morning of his first day in the Army, DAN rode part of the way to the barracks on a bus with his dad. He later recalled that at one point his father grew somber, offered his first son some brief advice about the importance of having good morals, then said something about the country he would soon defend.

''America has been good to us,'' his father said. ''And now—I would never have chosen it to be this way—but it is you who must try to return the goodness of this country.''

DAN INOUYE would make his father very proud. He has more than repaid the goodness of this country. I know I speak for every other Senator who has served with him, the people of Hawaii, and anyone who respects this institution or loves this country, when I say thank you for the dignity, the grace, and the heroism with which you have lived your great American life. You are an example and an inspiration to all of us.

I yield the floor.

The PRESIDING OFFICER (Mrs. MCCASKILL). The Senator from Hawaii.

Mr. AKAKA. Madam President, in the year 1924, a child was born to a woman who was nurtured by a Hawaiian family. He was born in Hawaii as an American of Japanese ancestry. He was brought up in Hawaii and went to school there, graduated from McKinley High School in 1942, and decided to serve our country, as he did. You have heard others tell about his activities as an Army person. But he went on to finally receive the Medal of Honor from this country, which is the greatest medal anyone can receive. This is Senator DAN INOUYE.

When he finished his service, he used the GI bill, of which he was a recipient, to be educated. When he returned to Hawaii, he entered into politics and served in the State legislature.

When Hawaii became a State in 1959, he was Hawaii's first U.S. House of Representatives Member. It was from there he did run for the Senate and was elected and has been here since that time. DAN INOUYE has served our country well over these years, and he has served Hawaii well.

So today I rise to mark a historic occasion, which is Senator INOUYE's 15,000th vote. This historic milestone is compelling evidence of Senator INOUYE's devotion to public service. The people of Hawaii have given him their trust, and in return he has fought relentlessly for our State and our country.

DAN INOUYE is an institution, without question, in the Senate, and I look forward to casting many more votes with my good friend and mentor and brother to benefit Hawaii and strengthen the United States.

God bless you, Senator INOUYE, and with much aloha.

Thank you very much.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Madam President, I am deeply moved and most grateful for the generous and warm remarks of my colleagues. I shall do my very best to live up to their praise.

I thank you very much.

(Applause, Senators rising.)

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 3927 TO AMENDMENT NO. 3911

(Purpose: To provide for the substitution of the United States in certain civil actions)

Mr. SPECTER. Madam President, I now call up amendment No. 3927.

The PRESIDING OFFICER. Without objection, the pending amendments are set aside.

The clerk will report.

The legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER], for himself and Mr. WHITEHOUSE, proposes an amendment numbered 3927 to amendment No. 3911.

Mr. SPECTER. Madam President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

(The amendment is printed in the RECORD of Friday, January 25, 2008, under ''Text of Amendments.'')

Mr. SPECTER. Madam President, there are 2 hours set aside for this amendment. We have about 24 minutes between now and 4:30, when the Senate will move on to other business.

I have just discussed with my distinguished colleague, Senator WHITEHOUSE, and the managers—Chairman ROCKEFELLER and Vice Chairman BOND—my intent to speak relatively briefly on an opening statement and then yield to Senator WHITEHOUSE and give an opportunity for opponents of the amendment to speak because I think that will tell the Senators and staffs what this is about and perhaps generate more interest and more concern to follow, and then have additional debate at a later time on the remainder of our time.

At the outset, I compliment my distinguished colleague, Senator WHITEHOUSE, who is in his first term in the Senate. I thank him for the work he has done coordinately with me and others on this bill.

Senator WHITEHOUSE brings a very distinguished record to the U.S. Congress. He has served as U.S. attorney for Rhode Island. He served as Rhode Island's attorney general. And he has made quite a contribution to the Judiciary Committee on what is a very complex matter.

Madam President, I ask unanimous consent that Senator LEVIN and Senator CARDIN be added as cosponsors of the amendment.

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

Mr. SPECTER. The essence of the pending amendment is to substitute the U.S. Government as a party defendant for the telephone companies, instead of having the current provision which provides for retroactive immunity to the telephone companies. The bill under consideration would give those companies retroactive immunity and foreclose litigation which is now pending in some 40 cases.

This issue is at the heart of the balance of values between national security and constitutional rights. There is no doubt, at least on this state of the record—where we do not know all of the details as to what the telephone companies have been doing—but it is presumed, for purposes of this argument, and I think accurately so, that what the telephone companies are doing has produced very high-level intelligence for the U.S. Government.

There is no doubt of the importance of high-level intelligence in our fight against terrorism. We sustained 9/11. We fight a deadly enemy around the world—al-Qaida. We want to protect the United States and its people and others, so that high-level intelligence is very important.

At the same time, constitutional rights are very important. I believe the substitution which Senator WHITEHOUSE and I are proposing accomplishes the objective of a continuation of getting this very vital intelligence information for national security and, at the same time, protects constitutional rights.

The essence of the proposal is that the U.S. Government would step into the shoes of the telephone companies, have the same defenses, no more and no less. The Government could not assert governmental immunity because the telephone companies could not assert governmental immunity. The Government could assert the State Secrets Doctrine, just as the it has by intervening in the cases against the telephone companies.

I believe it is vital that the courts remain open. I say that because on our delicate constitutional balance of separation of powers, the Congress has been totally ineffective on oversight and on restraining the expansion of executive authority. But the courts have the capacity, the will, and the effectiveness to maintain a balance.

But we find that the President has asserted his constitutional authority under article II to disregard statutes, the law of the land passed by Congress and signed by the President.

I start with the Foreign Intelligence Surveillance Act, which provides that the only way to wiretap is to have a court order. The Executive Branch initiated the Terrorist Surveillance Program in flat violation of that statute. Now, the President argues that he has constitutional authority which supersedes the statute. And if he does, the statute cannot modify the Constitution. Only a constitutional amendment can. But that program, initiated in 2001, is still being litigated in the courts. So we do not know on the balancing test whether the Executive has the asserted constitutional authority.

But if you foreclose a judicial decision, the courts are cut off. Then the executive branch has violated the National Security Act of 1947, which mandates that the Intelligence Committees of both the House and the Senate be informed of matters like the Terrorist Surveillance Program. I served as chairman of the Judiciary Committee in the 109th Congress. The chairman and the ranking member, under protocol and practice, ought to be notified about a program like that. But I was surprised to read about it in the newspapers one day, on the final day of argument on the PATRIOT Act Re-authorization. It was a long time, with a lot of pressure—really to get the confirmation of General Hayden as CIA Director—before the executive branch finally complied with the statute to notify the full Intelligence Committees. Now, on the other hand, the courts have been effective—and I will amplify this at a later time because I want to yield soon to Senator WHITEHOUSE and give the opponents an opportunity to speak before 4:30. But in the Hamdan case, the Supreme Court held that the President does not have a blank check in the war on terror. Justices held that the President cannot establish military commissions unless Congress authorizes it. In Hamdi, the Supreme Court concluded due process required that a citizen held in the United States as an enemy combatant be given a meaningful opportunity to contest the factual basis for that contention. In 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.

Well, this is not Pakistan, where President Musharraf can suspend the Supreme Court Justices and hold the Chief Justice under House arrest. This is America. The balance is maintained only because the courts are open. I believe it would be a major mistake to close the courts on pending litigation when the courts have provided the only effective way to check expanded executive authority, which we have seen in many lives. I will amplify those later, on matters such as signing statements.

But that is the essence of the argument. I am going to yield now to my distinguished colleague from Rhode Island because I think it is useful, as we move forward in the debate, to crystallize the issues. We know Senators and even staff don't pay a great deal of attention until the time for a vote is near, and when we see the essence of the two positions, I think we may create some more interest and have more people join this debate.

I yield the floor.

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

Mr. WHITEHOUSE. Madam President, I thank the distinguished Senator from Pennsylvania. I consider it a great personal honor to join him in sponsoring this important amendment. He has served with great distinction as a prosecuting attorney for Philadelphia for many years and then has served in this Senate for 27 years with great distinction, making him the longest serving Senator in Pennsylvania's history.

He has chaired the Senate Judiciary Committee, and he has always shown great intelligence and independence. In addition to all that, I am the junior member of the Senate Judiciary Committee, and he also has shown exceptional courtesy and good will toward me, notwithstanding my junior status and notwithstanding my position on the other side of the aisle. So it is with considerable pride and also considerable affection that I join him in supporting this amendment.

We face, as Senator SPECTER said, the critical balance between freedom and security, which will always be difficult to maintain as long as a threat of terrorism looms. As we all know, one of the many difficult issues that balance presents to us is the question of whether to grant immunity to telecommunications carriers who may have assisted the Government in this surveillance program.

On the one hand, the administration has called for a blanket grant of immunity to these companies. On the other hand, others have proposed preserving the status quo. We are proposing a more sensible, practical, middle path that does less constitutional damage and still protects the essential equities involved.

The choice is to give immunity, to stop the litigation, to end the claims against the companies, and take away the plaintiffs' case against them, which is not fair. Nothing yet suggests this is not completely legitimate litigation. The courts who are considering it haven't thrown it out, it is in process right now, and it is not fair to the plaintiffs to up and take away their day in court. Moreover, there is a huge separation of powers problem of a legislature intruding into ongoing litigation, now before a judge, and taking away active claims. We would be taking away plaintiffs' rights and claims, taking away their due process without even providing for the basic judicial finding that the defendant companies acted reasonably and in good faith. That damage suggests that blanket immunity is not a great solution and, indeed, it may even be unconstitutional.

The other choice we have on the immunity question is to do nothing. But consider this: the Government has forbidden the telephone company defendants to defend themselves, claiming state secrets privilege. They have tied the companies' hands behind their backs in this litigation, muzzled them, forbidden them to offer any defense. In my view, that is also not fair, particularly if the Government put these companies into this mess in the first place. If the Government wants to forbid self-defense by these companies, the decent thing for the Government to do would be to step into the lawsuit, and defend on their behalf. The Government should not leave legitimate American companies in the judicial arena, bound and muzzled, unable to defend themselves, and not itself be willing to step in the ring and take over. So it strikes me that doing nothing is not a great solution either.

The solution that fits the problem we face is this Specter-Whitehouse amendment, and it has two very simple parts. One, a judicial determination, confidentially, in the FISA Court, whether these companies acted reasonably and in good faith. That is a very simple determination that can be made with a very small amount of testimony based in many respects simply on the record of what was provided to companies. Second, if they did act reasonably and in good faith, there is then a well-established procedure under rule 25 of the Federal Rules of Civil Procedure, rule 25(c) to be specific, that can substitute the Government for these companies in this litigation.

First, let me talk about the good-faith determination. I hope we can all agree that if the companies did not act reasonably and in good faith, they shouldn't get protection. I hope we can agree on that. We establish a simple procedure for the good-faith question to be answered by the FISA Court. We in Congress should not be the judges of that. We are not judges. Good faith is a judicial determination. This is ongoing litigation. The companies have, of course, asserted to us that they acted in good faith, but that is no basis for us to conclude that, and we surely should not rely on one side's assertion in making a decision of this importance. 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 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.

Second, substituting in the Government. Well, if it turns out the Government directed the companies to engage in conduct that broke the law, the Government is the proper authority. If the companies acted reasonably and in good faith but ended up somehow breaking the law because of what the Government directed them to do, the real actor is the Government. Lawyers in this body will understand this is analogous to a principal-agent relationship. The Government is in effect the principal, the company acting as directed is the Government's agent, and under principal-agency law, the principal is liable for the acts of the agent.

So the simple solution contained in this amendment follows the law, it is founded in the Federal Rules of Civil Procedure, and it fits the problem we face. Consider: No one has legitimate rights and due process summarily taken away. This is, after all, the United States of America.

Two, if the carriers acted reasonably and in good faith, the Government steps in for them. In fact, the carriers get a judgment in their favor dismissing them from the cases.

Third, no one is forbidden to defend themselves in ongoing litigation. No one is bound and muzzled but forced to stay in a judicial fight.

Fourth, there is no intrusion by Congress into ongoing adjudication, no separation of powers trespassed.

Finally, if the companies acted reasonably and in good faith at the direction of the Government but ended up breaking the law, the Government truly is the morally proper party to the case. So this is not just sensible, but it is right. I hope my colleagues will support this amendment.

I see time is a little short, but let me continue a little bit longer because I wish to expand a little bit on this concern that intrusion by Congress into ongoing adjudication presents a separation of powers problem. Let me go all the way back to why we set up the separation of powers in the first place. I quote U.S. Supreme Court Justice Scalia specifically who said:

> The sense of a sharp necessity to separate the legislative from the judicial power triumphed among the Framers of the new Constitution prompted by a crescendo of legislative interference with private judgments of the courts.

So the question of a legislature interfering with ongoing litigation was the live concern of the Founding Fathers when they separated the powers. In a case called the United States v. Klein, the U.S. Supreme Court threw out a congressional statute that purported to provide the rule of decision in a particular case, saying of this relationship between the legislative and judicial powers:

> It is of vital importance that the legislative and judicial powers be kept distinct. It is the intention of the Constitution that each of the great courts and departments of the government—the legislative, the executive, and the judicial—shall be in its sphere independent of the others.

So I urge my colleagues who are considering this to consider the sensible merits of this amendment, to consider this is the morally right way to go forward, and further, to consider that it reduces considerably the risk that if we go ahead and give these companies this immunity, the companies end up with a lawsuit, they end up with a case and a statute that is thrown out because it is unconstitutional, and in effect we create a snarl rather than a solution for them.

So with that said, I would again like to say how very much it means to me to be cosponsoring this amendment with the very distinguished Senator and former chairman of the Judiciary Committee, Senator SPECTER of Pennsylvania.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. ROCKEFELLER. Madam President, I am reluctant to ask, but I must, how much time remains before 4:30?

The PRESIDING OFFICER. There is 2½ minutes before 4:30.

Mr. ROCKEFELLER. Wonderful.

Madam President, I simply rise to say I will oppose this amendment and I will oppose it strongly and I think for a series of very good reasons. But in spite of my eloquence and the ability to talk very quickly, I simply cannot do the task in 1½ minutes. So I ask unanimous consent to reserve my right to speak further at the appropriate time before the vote.

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

The Senator from Missouri is recognized.

Mr. BOND. Madam President, with the time so graciously allowed us by the proponents of this measure—and I know it was not intentional—I will only say a couple of quick things. No. 1, the courts are not precluded. The underlying bill, the bipartisan bill, permits lawsuits to go forward against the Government and the Government employees. No. 2, there was notification of the Big Eight—the ranking members and chairmen of the Intelligence Committees and the leaders—when this program was started. No. 3, article 2 does give the President the power to exercise foreign intelligence collections.

I would say to my colleague who has been on the Intelligence Committee, if he doesn't think Congress has been effective in overseeing programs, he has not seen the committee that is chaired by Senator ROCKEFELLER and on which I ride shotgun with him. The Judiciary Committee—if it was not advised, the Judiciary Committee's primary responsibility is not intelligence. That is the Intelligence Committee. We get the sensitive information. We spend a great deal of time. We have reviewed it. We believe it is a disaster for our intelligence collection to have substitution because we would see our most sensitive means of collection exposed. The private parties that might have participated would be put through tremendous economic and commercial harm and subjected potentially to harassment, and perhaps even terrorist attacks, for having worked with us.

Therefore, I strongly urge that our colleagues defeat amendment No. 3927, the Specter-Whitehouse substitution amendment.

Mr. KENNEDY. Madam President, the amendment that I have offered with Senators KERRY and MENENDEZ addresses a serious problem with the FISA bill that we are now considering, and I am very pleased that it has been incorporated into the bill by unanimous consent.

The amendment clarifies that under the new authority provided in this legislation, the Government may not intentionally acquire a communication when it knows ahead of time that the sender and all of the intended recipients are located in the United States. When the Government knows ahead of time that both the person making the call and the person receiving the call are located inside the United States, it will have to get a court order before it can listen in on that call. This is the way FISA has always worked, and my amendment makes sure that the law stays that way.

There is broad agreement that communications known ahead of time to be purely domestic should continue to be governed by the standard FISA rules. Indeed, the Bush administration has repeatedly stated that it does not intend to use the new authority granted under the Protect America Act or this legislation to acquire communications that are purely domestic, without obtaining a court order first. The administration acknowledges that when the Government knows that all the parties to a conversation are in the United States, a specific court order should be needed to intercept that conversation.

I haven't heard a single Member of Congress disagree with this point. But without this amendment, the FISA bill's new authority could be used to acquire purely domestic communications without a court order.

The bill requires the Government's ''targeting procedures'' to be designed ''to ensure that any acquisition . . . is limited to targeting persons reasonably believed to be located outside the United States.'' The problem arises because sometimes the ''target'' of the surveillance may be abroad, but the communications that the Government wants to acquire may occur entirely inside the United States, because the subject matter concerns the target who is abroad. The term ''target'' is not defined in FISA, but the legislative history states that the ''target'' is the person or entity ''about whom or from whom information is sought.'' That broad definition is capable of being interpreted to allow surveillance of people other than a ''target.''

For example, the Government might believe that two Americans in the United States—let's call them Tom and Mary—will discuss a third party who is located outside the country. Under this bill, that third party can be a group, not just an individual, and the Government can obtain a blanket warrant that allows it to spy on everything that group does in the future. Although the authors of the bill have stated this should not occur, the concern is that when Tom and Mary talk to each other, the Government might claim the third party is the ''target'' who provides the legal basis for the surveillance—with the practical result being that the Government could listen in on the conversation without making any showing to any court about Tom and Mary.

My amendment protects innocent Americans by clarifying that traditional FISA rules still govern for communications known to be occurring within the country. The Government could still spy on Tom and Mary—but it would have to obtain a warrant first, with the usual exception for emergencies.

According to the administration, the law already requires this. The administration has said flat out that it will not wiretap purely domestic communications without first obtaining a court order.

But these kinds of statements are no answer when Americans' basic liberties are at stake. ''Trust us'' is not enough.

FISA experts such as David Kris, a highly respected former lawyer at the Justice Department and the author of the leading treatise on FISA law, believe that the legislation is not clear right now. And if the law is unclear, there will be tremendous pressure on the intelligence community to apply it as aggressively as possible, because it is their duty to do everything they can within the boundaries of law.

As Mr. Kris recently stated, even though the Intelligence Committee bill prohibits the targeting of persons known to be in the United States, it ''does not, however, foreclose all surveillance of [purely] domestic communications . . . because surveillance can 'target' an international terrorist group located abroad, but still be directed at a domestic telephone number or other domestic communications facility.''

Mr. Kris has said that his ''principal concern about [this bill] . . . is that it resembles the Protect America Act in allowing surveillance of domestic communications'' without a warrant. This is a radical change to a FISA system that has protected Americans for three decades. If put to a vote, I have no doubt that Americans would reject it.

This concern can't be waved away by the administration telling us that it takes a different legal view. When one of the top FISA experts in the country says that the law is not clear, we should listen.

Promises about how the Government will interpret the law in the future are not enough. If we all agree about a specific policy goal—and everyone should agree that in purely domestic-to-domestic situations, the traditional FISA rules should apply—then we should be very clear about that goal in the legislation we write. Any FISA law that Congress passes may set the rules on surveillance for years to come, and different administrations may interpret ambiguous language in different ways.

My amendment makes clear that the traditional FISA rules apply when the Government knows ahead of time that the communication is purely domestic. The amendment does not add any substantive changes to the law; it adds clarity and certainly where now there is ambiguity and confusion.

Americans deserve to feel confident when they are talking with their friends, neighbors, and loved ones inside the United States that they will not be spied on without a warrant. Bringing clarity to this area of the law is good for Americans' liberties, and it is good for national security. I congratulate my colleagues for adopting this amendment.