

On May 18, Senator BIDEN sent a letter directly to Ambassador Negroponte, our new Director of National Intelligence, requesting these NSA intercepts.

On May 26, he sent a second letter to Negroponte, again making the same request.

On June 1, I called Ambassador Negroponte to offer a proposal for resolving the intercept issue.

On June 2, I sent a letter to Ambassador Negroponte which laid out in writing the June 1 verbal proposal.

On June 3, Ambassador Negroponte called me to say, "no deal."

On June 8, Senator ROBERTS approached me and suggested that pursuing my idea of a giving a list of names to the administration might bear fruit. He also proposed a role for the Select Committee on Intelligence in the process. That seemed reasonable to me. After consultation with Senator BIDEN he did, too.

On June 9, Senator BIDEN and I sent a letter laying out our understanding on how names might be provided to the administration, and what the role for the chair and cochair might be in the process.

On June 14, Senator ROBERTS replied in writing to our letter saying he could not support our proposal. I would add that our colleague Senator ROCKEFELLER has said he believes our proposal is eminently reasonable.

Through all of this, no one from the White House has contacted me or my colleague Senator BIDEN to offer any proposal for moving this process along.

In short, the administration has made no effort to meet Senator BIDEN and me halfway or even one-quarter of the way. The answer is either no or even worse, silence.

I ask my colleagues: If there is nothing in all of these documents, why have they not been provided? If there is nothing in them, then surely, providing them would clear up some of our concerns rather quickly. And make it possible to move forward with an up or down vote on the nomination.

And so if there is culpability for the delay in the Senate's consideration of the Bolton nomination, that culpability rests with the Bush administration. They have the ability to unlock this nomination by cooperating with this Senate as they did during the consideration of nominations during President Bush's first term in office.

I stand ready to listen to any proposal from the administration to resolve this matter. I know my colleague Senator BIDEN does as well. But the institutional prerogatives of the Senate are at stake here, and I believe we have the responsibility of protecting those prerogatives for this Congress and future Congresses. I am pleased and grateful that sufficient numbers of our colleagues appear to feel the same way.

I hope all Senators, regardless of whether they believe John Bolton will be a great man at the United Nations or not, realize this is a matter of con-

stitutional equity. Either the Senate, as a coequal branch of Government, has the right to request and receive through appropriate Members and appropriate committees pertinent information relating to a critical nomination or not, and if we do not, then I think this body suffers in its ability to perform its constitutional duties.

That is what we are requesting. It can be satisfied in a matter of hours, and then the Senate, as a body, can vote up or down on John Bolton to send him to the U.N. or not send him to the U.N. But to stonewall this institution on information we have a right to receive I think is wrong and I think it jeopardizes the relationship between the Senate and the White House.

My hope is the White House will respond to the modified requests we have made so we can get about the business of voting on this nomination and moving to other matters before the Senate.

I thank my colleagues from Iowa and Illinois for being generous with their time.

The PRESIDING OFFICER. The Senator from Iowa is recognized for 15 minutes.

RENEWABLE FUEL STANDARD

Mr. HARKIN. Mr. President, this is, indeed, an exciting time and moment. We have an 8-billion-gallon national renewable fuel standard that is going to be part of the Senate Energy bill. A previous bill I sponsored with Senator LUGAR and 18 other Senators serves as much of the basis for what we now have before us. This amendment takes us a bold step closer to improving the Nation's energy security, domestic and farm economy, and our environment.

To say we have a growing problem with energy in this country is an understatement. Today, about 97 percent of our transportation fuel comes from oil, two-thirds of that from foreign sources. This excessive dependence on petroleum undermines our national security, as we all know, and it reeks havoc on consumers who are now dealing with record-high gasoline prices. Our policy today costs us jobs. There are 27,000 lost U.S. jobs for every \$1 billion in imported oil. Our present policy damages our environment with fully one-third of the greenhouse gases now coming from vehicle emissions alone.

And the truth is, the problem is not going away, it is only getting worse.

Right now we are importing 60 percent of our oil from foreign countries. That percent is expected to increase, not decrease, to about 70 percent by 2025.

According to the Natural Resources Defense Council, America spends \$200,000 per minute on foreign oil, or \$13 million an hour. And more than \$25 billion goes to the Persian Gulf imports alone. A study by the Department of Energy found that our dependency on oil from unsteady regimes outside our borders has cost the country an astonishing \$7 trillion over the last 30 years, measured in current dollars.

If these figures are not disturbing enough, here is one more. According to the National Defense Council Foundation, the economic penalties of America's oil dependence are between \$297 billion to \$304 billion annually.

The Institute for the Analysis of Global Security, using this data, calculated the hidden costs at the gas pump. Everyone thinks we are paying around—I heard my friend from New York say in New York the price of gas is \$2.25, in Iowa it is around \$2.03, \$2.05, and around here it is about \$2.10 a gallon. That is what we think we are paying. But the Institute for the Analysis of Global Security, using the data about the hidden costs, has determined that the real cost of a gallon of gas at the pump is more than \$7 a gallon. A typical tankful of gas really would cost more than \$140.

What are those hidden costs? Add up what we are spending in the military alone in the Mideast and you come pretty close to the figure.

We have a choice. We can stand by, feed our addiction to foreign oil, or we can make a decisive shift now toward clean domestic renewable fuels such as ethanol and biodiesel. This will allow us to wean the U.S. economy from its dangerous level of dependence on foreign oil that is a clear and present danger to our economy and national security.

The renewable fuels standard will more than double the amount of ethanol and biodiesel in our fuel supply by 2012. It will firmly commit our Nation to clean, secure, diversified sources of domestic energy, not in some distant future but immediately in the years ahead.

Domestic ethanol production grew 21 percent in 2004 to more than 3.4 billion gallons. I might just add, ethanol was introduced seamlessly in California and New York, where it helped to buffer rising crude oil prices.

I know my good friend from New York had to leave, but I have since found out that right now there are two large production ethanol plants planned for construction in the State of New York; two big ones, one that is 100 million gallons a year, the other a bit smaller, being constructed right now in New York and more to come online later on.

Why is that? Because the technology is developing at a rapid pace to produce ethanol, not just from corn or sugar but from underutilized materials such as cornstalks, wood waste, cellulosic material, all kinds of biomass feedstocks.

So what we are doing makes sense. With an 8-billion-gallon renewable fuels standard, we establish a strong floor for the time frame under consideration. The fact is, we will have no trouble whatsoever producing enough ethanol to meet this standard. As I said, the industry already has the capacity to produce nearly 4 billion gallons of ethanol a year.

I will be frank. A lot of this does come from my State of Iowa. We lead

the Nation in biofuels production. I am proud of that. I am proud of the fact that 11 of the 16 ethanol plants in my State are predominantly owned by farmers. We have biodiesel plants as well. Biofuels plants are being built in many other places, too, but also in my State.

These farmer-owned biofuels plants are adding value to our rural economies. According to a recent study, each typical ethanol plant creates 700 jobs, expands the local economic base by more than \$140 million, and provides an average 13-percent annual return on investment over 10 years to a farmer investor.

Iowa's 16 ethanol plants and 3 biodiesel plants, with more on the way, serve as local engines of economic growth. Our ethanol plants are expected to contribute \$4 billion annually to the State's economy once all are in production, with more than 5,000 direct and indirect jobs. Once all of the plants are online, the industry will utilize about 500 million bushels of Iowa corn each year.

That was just for Iowa. Nationally, this renewable fuels standard is expected to create over 200,000 new jobs and add nearly \$200 billion to our gross domestic product. Within 10 years, this standard will replace more than 3 billion barrels of foreign oil, more to reduce import dependence over this time than the economically recoverable oil in the Alaska National Wildlife Refuge, before production even begins there.

I say again to my friend from New York, there is a choice. We can continue to spend our money—approximately \$25 billion a year—in the Persian Gulf, or we can start spending it at home, not just in Iowa but in Georgia, New York, Illinois, and all over this country, where we are going to see these plants being built.

So we know that renewable fuels are good products. We know we can meet the demand. We know that it will help us in a lot of ways.

The Consumer Federation of America came out with a study just a month ago that found consumers could save as much as 8 cents per gallon if more ethanol were blended into the Nation's fuel supply. Well, I bet my friend's moms who are driving kids to school, as he mentioned, would like to save 8 cents per gallon as they buy their gasoline.

A story in the New York Times over the weekend reported that consumers in my home State of Iowa are saving up to 10 cents per gallon with ethanol blended gasoline. I will bet consumers in other States would like to have that same savings.

I have heard one other comment made about this renewable fuels issue saying it is going to be bad for the environment. That is not true. First, it is renewable. It is made from homegrown renewable materials, not pumped out of wells half a world away and shipped to us. When is the last time one ever heard about an ethanol spill killing

birds, marine life, or polluting coastlines? The answer is never, and it never will happen because ethanol is nontoxic and it is biodegradable.

Here is something else that my colleagues hear a lot about, that it takes more energy to produce it then is gotten out of it. Again, nonsense. Ethanol is energy efficient. Every 100 Btus of energy used to produce ethanol—that includes the planting, the harvesting, the cultivating, the processing—yields 135 Btus of ethanol. So 100 Btus in, 135 out. By comparison, the same 100 Btus of energy used in the transportation, shipping, and refining of oil yields only 85 Btus in gasoline.

Someone might ask: Well, why is that? Very simply, sunlight is free. The rain is free. These things grow. Sunlight and nature are being used as free assets to get ethanol. So just from an energy efficiency standpoint, we ought to be moving ahead aggressively.

Lastly, my friend also said something about emissions. Well, the fact is ethanol reduces key emissions such as carbon monoxide, particulates that cause smog. In a recent study by the Argonne National Lab, ethanol was found to significantly lower carbon dioxide emissions, the main gas contributing to global warming.

A lot of people in this body want to address the issue of climate change. Yet some fail to see how biofuels are an essential component of any greenhouse gas emissions reduction strategy. Keep in mind, when ethanol is burned, is carbon dioxide being put out there? Yes, it is. So you might say that adds to greenhouse gases, but keep in mind, that the corn plant or that tree or whatever it is that is grown that one gets the ethanol out of, it is taking carbon dioxide out of the air. Not true of the oil that is pumped out of the ground. It puts carbon dioxide into the air but never takes it out. That is why renewable fuels are so important for our environment. Yes, it would put carbon dioxide in the air, but as it grows, using that sunlight and rain to grow, it takes carbon dioxide out.

The renewable fuels standard is sound public policy. It is a key part of any plan to wean our Nation off of foreign oil. Contrary to what my friend from New York said—I am sorry he had to leave—there is a built-in flexibility through a system of tradable credits for oil refiners who exceed their minimum requirement. It includes waiver language from the requirements of the renewable fuels standard for a region or a State if circumstances warrant it. It rewards production of emerging biofuels such as cellulosic ethanol that provide tremendous value to our country, our farmers, and the environment.

Again, these and other provisions are all in the renewable fuels standard amendment that is being offered to the energy bill. That is why it is so important that we keep the standard in there, that we move ahead, wean ourselves off of Persian Gulf oil, clean up the environment, and put the money in

this country. Let us spend our money developing energy in America rather than over in the Persian Gulf.

I yield the floor, and I thank my colleague from Illinois.

The PRESIDING OFFICER (Mr. THUNE). The Senator from Illinois is recognized for up to 25 minutes.

Mr. DURBIN. Let me thank my colleague from Iowa. He and I have something in common: We are interested in alcohol fuels, ethanol and diesel. We understand these are homegrown. You don't have to wait for the OPEC cartel to decide to send them to you. We grow the corn in the field, and one out of every six bushels of corn that is grown in America creates ethanol, alcohol fuel.

Earlier, my colleague and friend from New York was talking about, What could this possibly mean to farmers? He doesn't understand the mechanics of the market. More demand raises prices. Demand for corn to use it to create ethanol and alcohol fuels will help farmers. As farmers receive higher prices for their corn, there are lower payments in the Federal programs. The taxpayers are going to benefit as well.

Mr. HARKIN. That is right.

Mr. DURBIN. What the Senator from New York failed to note—and I was about to interrupt him, but since I live with him, I interrupt him all the time—I just live with him in Washington, incidentally; there is a family situation otherwise. What I was going to remind him was when these trucks are coming in with ethanol into New York and getting stalled in traffic and burning up their fuel, if they have ethanol in their tanks, there is less pollution in his beautiful New York City. So we have another added benefit here—not just more income for farmers and less in payments by taxpayers for farm programs but cleaner air and less dependence on foreign oil.

I hope Senator HARKIN and I can take this on as a class project, to try to work on Senator SCHUMER from New York. He is a very delightful man and does a great job for his State, but he needs some very fundamental education on corn and ethanol and what it means for America.

Mr. HARKIN. I join with the Senator. We will do a little educating for him.

Mr. DURBIN. This is probably a task we should not undertake because it is momentous, but we will try anyway. This is the Energy bill. It is a big bill, as you can tell. I sat down and did something kind of unique: I decided to read it, just to decide what we are voting on. I don't say that entirely in a negative fashion because some of this is so technical, you need to have staff go through and figure out exactly what is happening in this bill.

The one thing that is most important about this bill is not the fact that Senator DOMENICI of New Mexico has worked so hard on it with Senator BINGAMAN and done such a good job on a bipartisan basis to bring it to us. That is a positive thing, and I complimented Senator DOMENICI about it

earlier. What is troubling about this bill is it is setting out to establish:

the enhancement of the energy security of the United States.

Since it is setting out to establish America's energy policy, you would think to yourself, How do most Americans come in contact with energy each day? Certainly when you flip the lights on in the morning or in the evening, you come in contact with electricity, but equally so, when you get into that car or into that truck or on that bus, you are in contact with the energy policy of America.

If that is an important part of our life experience with energy, if over 60 percent of all the oil we bring into the United States is used to fuel vehicles, trucks and cars, you would just assume that a large part of this bill of almost 800 pages must be devoted to the whole question of the fuel efficiency of cars and trucks. Isn't that obvious? Wouldn't that be one of the first things?

Sadly, you are going to have to search long and hard to find any reference in here to the fuel economy and fuel efficiency of cars and trucks in America. The question I have asked over and over again is, How can you have an honest energy policy for America and not talk about that? How can you really have a policy that reduces our dependence on foreign oil if we do not talk about more fuel-efficient cars and trucks—more conservation?

I don't think you can. The only provision in this bill that addresses that, in the most indirect and oblique way, says that over the next 10 years, we will reduce the demand for oil in America by 1 million barrels a day. That is a good thing. I support that. It doesn't spell out how we will do it. Frankly, it doesn't reflect the ambition we should have in putting together this bill because we can do better. We can do a lot better.

Tomorrow, Senator MARIA CANTWELL of Washington is going to offer the amendment from the Democratic side about energy policy. It is our lead amendment. The reason it is our lead amendment is we believe it gets to the heart of the question. Here is what we believe in our Democratic Senate caucus. We think we should add to this bill language which says: Over the next 20 years, we will reduce our dependence on foreign oil in America by 40 percent.

Frankly, I think we can do better, but we establish a standard of 40 percent. Today, 58 percent of all of the oil that we burn each day in America comes from overseas—58 percent. Unchecked, unchanged, it is estimated that in 20 years, it will be 68 percent. More than two out of every three barrels of oil will be imported into the United States.

If the Democratic amendment is adopted—and I hope it is, on a bipartisan basis—if we reduce the foreign imports by 40 percent over the next 20 years, the number will go from 58 percent to 56 percent. That is still too

high, but to do nothing means that our dependence on foreign oil will grow.

Depending on foreign oil means depending on the people who own it. I do not want my future, the future of my children or grandchildren, in the hands of the Saudi Royal Family. That is what their future will be tied to—in a world where there will be even more competition over OPEC oil.

You cannot pick up a magazine or an article anywhere that does not refer to the growth of China and its economy. They are just sucking away jobs from America, to paraphrase Ross Perot, and creating new opportunities for jobs in a country that is deficient in energy. So they are looking all over the world to find where they can import gas and oil so they can fuel the growing Chinese economy.

What it means, of course, is China will be our competitor for that oil in the years to come. If we do not take care to reduce our dependence on foreign oil, we will find ourselves in a predicament even worse than today, where the cost of oil will be increasing because of increased demand for limited resources, and our dependence will be increasing at the same time. What a recipe for economic disaster in America.

I will tell you one thing that is troubling. Remember the only provision in this bill related to fuel efficiency that I mentioned earlier that wants to reduce our dependence on foreign oil by a million barrels a day? We just got an official statement from the Bush White House today—they oppose that provision. They want to take it out of the bill. That is the only provision in the bill relative to fuel efficiency and fuel economy, and they want to have it taken out of the bill.

This is the same administration that does not concede the fact that there is global warming, the same administration which last week had to dismiss a man who was doctoring environmental documents and statements to make it look as if there is no threat of global warming. This same administration says they want to take out the only provision in the bill that would move us toward less dependence on foreign oil. What are they thinking? This is the leadership in the White House?

The President can walk, literally hand in hand, with a Saudi prince at his ranch in Texas, but does America want to walk hand in hand with a Saudi prince for the next 20 years? Not me—no. I want to see us move toward energy independence. It is not likely we will reach it in its entirety in my lifetime, but don't we owe it to future generations to lessen our dependence on foreign oil?

Which moves me to a second topic, which is related. That dependence on foreign oil draws us into a lot of predicaments around the world. Ask the 150,000 American soldiers in Iraq today. Ask whether we would be as focused as we are on the Middle East and its stability if we were not dependent on

those oil tankers every single day leaving that Arabian peninsula, the Arabian area, coming into the United States with this oil we need so desperately. I do not think it is likely we would be there with that much intensity of feeling. But we are there.

Because of our dependence on foreign oil, we have been drawn into a conflict, now more than 2 years in length, with no end in sight. I was one of 23 Senators who voted against the Use of Force Resolution that authorized President Bush to invade Iraq. That was not because I had any sympathy for Saddam Hussein—I never have had—but because I believed this administration had misled the American people about the real threat in Iraq. It turns out afterward we were misled, there were no weapons of mass destruction, no nuclear weapons, no connection with 9/11. It turns out the threats we were told existed did not exist. The American people were misled.

Sadly, this administration took the best military in the world and invaded Iraq and very quickly made short order of Saddam Hussein and his troops but didn't know what to do next. They won the war. They couldn't figure out how to win the peace. And we still pay the heaviest possible price every single day because of their lack of preparedness.

Think about it. Over the weekend, the number of American soldiers killed in Iraq in combat now has reached about 1,700—1,700 of our sons and daughters have given their lives in Iraq, with no end in sight. Soldiers sent into battle by an administration which has received every penny they have asked for from Congress to supply our troops. Soldiers sent into battle, killed, still today, in unarmored humvees. Soldiers without body armor. Soldiers without the proper equipment.

I have been there. I have seen it. I have heard it. I have talked to these soldiers. I know a few weeks ago in Iraq this was the case. That, to me, is a tragedy and a travesty.

What is also troubling is that this Congress is afraid to even ask the hard questions of this administration. When was the last time we had a serious hearing on Capitol Hill about the contract abuses of Halliburton in Iraq? We will have to search the CONGRESSIONAL RECORD long and hard to find there has not been such a hearing. We do not get into that issue. When was the last time we had a hearing on Capitol Hill about the serious problems we are having in recruiting new soldiers, marines, sailors, and airmen? That is a big problem. The best military in the world needs the best men and women. Why is it they will not join the ranks to fight in this war in Iraq and Afghanistan? That is worth a hearing, isn't it? We are still waiting for it.

There will be a hearing tomorrow—and I commend the chairman of the Senate Judiciary Committee, Senator Arlen Specter—to discuss some of the basic issues about a very serious problem that we face.

Mr. President, there has been a lot of discussion in recent days about whether to close the detention center at Guantanamo Bay. This debate misses the point. It is not a question of whether detainees are held at Guantanamo Bay or some other location. The question is how we should treat those who have been detained there. Whether we treat them according to the law or not does not depend on their address. It depends on our policy as a nation.

How should we treat them? This is not a new question. We are not writing on a blank slate. We have entered into treaties over the years, saying this is how we will treat wartime detainees. The United States has ratified these treaties. They are the law of the land as much as any statute we passed. They have served our country well in past wars. We have held ourselves to be a civilized country, willing to play by the rules, even in time of war.

Unfortunately, without even consulting Congress, the Bush administration unilaterally decided to set aside these treaties and create their own rules about the treatment of prisoners.

Frankly, this Congress has failed to hold the administration accountable for its failure to follow the law of the land when it comes to the torture and mistreatment of prisoners and detainees.

I am a member of the Judiciary Committee. For two years, I have asked for hearings on this issue. I am glad Chairman SPECTER will hold a hearing on wartime detention policies tomorrow. I thank him for taking this step. I wish other members of his party would be willing to hold this administration accountable as well.

It is worth reflecting for a moment about how we have reached this point. Many people who read history remember, as World War II began with the attack on Pearl Harbor, a country in fear after being attacked decided one way to protect America was to gather together Japanese Americans and literally imprison them, put them in internment camps for fear they would be traitors and turn on the United States. We did that. Thousands of lives were changed. Thousands of businesses destroyed. Thousands of people, good American citizens, who happened to be of Japanese ancestry, were treated like common criminals.

It took almost 40 years for us to acknowledge that we were wrong, to admit that these people should never have been imprisoned. It was a shameful period in American history and one that very few, if any, try to defend today.

I believe the torture techniques that have been used at Abu Ghraib and Guantanamo and other places fall into that same category. I am confident, sadly confident, as I stand here, that decades from now people will look back and say: What were they thinking? America, this great, kind leader of a nation, treated people who were detained and imprisoned, interrogated

people in the crudest way? I am afraid this is going to be one of the bitter legacies of the invasion of Iraq.

We were attacked on September 11, 2001. We were clearly at war.

We have held prisoners in every armed conflict in which we have engaged. The law was clear, but some of the President's top advisers questioned whether we should follow it or whether we should write new standards.

Alberto Gonzales, then-White House chief counsel, recommended to the President the Geneva Convention should not apply to the war on terrorism.

Colin Powell, who was then Secretary of State, objected strenuously to Alberto Gonzales' conclusions. I give him credit. Colin Powell argued that we could effectively fight the war on terrorism and still follow the law, still comply with the Geneva Conventions. In a memo to Alberto Gonzales, Secretary Powell pointed out the Geneva Conventions would not limit our ability to question the detainees or hold them even indefinitely. He pointed out that under Geneva Conventions, members of al-Qaida and other terrorists would not be considered prisoners of war.

There is a lot of confusion about that so let me repeat it. The Geneva Conventions do not give POW status to terrorists.

In his memo to Gonzales, Secretary Powell went on to say setting aside the Geneva Conventions "will reverse over a century of U.S. policy and practice . . . and undermine the protections of the law of war for our own troops . . . It will undermine public support among critical allies, making military cooperation more difficult to sustain."

When you look at the negative publicity about Guantanamo, Secretary Colin Powell was prophetic.

Unfortunately, the President rejected Secretary Powell's wise counsel, and instead accepted Alberto Gonzales' recommendation, issuing a memo setting aside the Geneva Conventions and concluding that we needed "new thinking in the law of war."

After the President decided to ignore Geneva Conventions, the administration unilaterally created a new detention policy. They claim the right to seize anyone, including even American citizens, anywhere in the world, including in the United States, and hold them until the end of the war on terrorism, whenever that may be.

For example, they have even argued in court they have the right to indefinitely detain an elderly lady from Switzerland who writes checks to what she thinks is a charity that helps orphans but actually is a front that finances terrorism.

They claim a person detained in the war on terrorism has no legal rights—no right to a lawyer, no right to see the evidence against them, no right to challenge their detention. In fact, the Government has claimed detainees have no right to challenge their deten-

tion, even if they claim they were being tortured or executed.

This violates the Geneva Conventions, which protect everyone captured during wartime.

The official commentary on the convention states:

Nobody in enemy hands can fall outside the law.

That is clear as it can be. But it was clearly rejected by the Bush administration when Alberto Gonzales as White House counsel recommended otherwise.

U.S. military lawyers called this detention system "a legal black hole." The Red Cross concluded, "U.S. authorities have placed the internees in Guantanamo beyond the law."

Using their new detention policy, the administration has detained thousands of individuals in secret detention centers all around the world, some of them unknown to Members of Congress. While it is the most well-known, Guantanamo Bay is only one of them. Most have been captured in Afghanistan and Iraq, but some people who never raised arms against us have been taken prisoner far from the battlefield.

Who are the Guantanamo detainees? Back in 2002, Secretary Rumsfeld described them as "the hardest of the hard core." However, the administration has since released many of them, and it has now become clear that Secretary Rumsfeld's assertion was not completely true.

Military sources, according to the media, indicate that many detainees have no connection to al-Qaida or the Taliban and were sent to Guantanamo over the objections of intelligence personnel who recommended their release. One military officer said:

We're basically condemning these guys to a long-term imprisonment. If they weren't terrorists before, they certainly could be now.

Last year, in two landmark decisions, the Supreme Court rejected the administration's detention policy. The Court held that the detainees' claims that they were detained for over two years without charge and without access to counsel "unquestionably describe custody in violation of the Constitution, or laws or treaties of the United States."

The Court also held that an American citizen held as an enemy combatant must be told the basis for his detention and have a fair opportunity to challenge the Government's claims. Justice Sandra Day O'Connor wrote for the majority:

A state of war is not a blank check for the President when it comes to the rights of the Nation's citizens.

You would think that would be obvious, wouldn't you? But yet, this administration, in this war, has viewed it much differently.

I had hoped the Supreme Court decision would change the administration policy. Unfortunately, the administration has resisted complying with the Supreme Court's decision.

The administration acknowledges detainees can challenge their detention in court, but it still claims that once they get to court, they have no legal rights. In other words, the administration believes a detainee can get to the courthouse door but cannot come inside.

A Federal court has already held the administration has failed to comply with the Supreme Court's rulings. The court concluded that the detainees do have legal rights, and the administration's policies "deprive the detainees of sufficient notice of the factual bases for their detention and deny them a fair opportunity to challenge their incarceration."

The administration also established a new interrogation policy that allows cruel and inhuman interrogation techniques.

Remember what Secretary of State Colin Powell said? It is not a matter of following the law because we said we would, it is a matter of how our troops will be treated in the future. That is something often overlooked here. If we want standards of civilized conduct to be applied to Americans captured in a warlike situation, we have to extend the same manner and type of treatment to those whom we detain, our prisoners.

Secretary Rumsfeld approved numerous abusive interrogation tactics against prisoners in Guantanamo. The Red Cross concluded that the use of those methods was "a form of torture."

The United States, which each year issues a human rights report, holding the world accountable for outrageous conduct, is engaged in the same outrageous conduct when it comes to these prisoners.

Numerous FBI agents who observed interrogations at Guantanamo Bay complained to their supervisors. In one e-mail that has been made public, an FBI agent complained that interrogators were using "torture techniques."

That phrase did not come from a reporter or politician. It came from an FBI agent describing what Americans were doing to these prisoners.

With no input from Congress, the administration set aside our treaty obligations and secretly created new rules for detention and interrogation. They claim the courts have no right to review these rules. But under our Constitution, it is Congress's job to make the laws, and the court's job to judge whether they are constitutional.

This administration wants all the power: legislator, executive, and judge. Our founding father were warned us about the dangers of the Executive Branch violating the separation of powers during wartime. James Madison wrote:

The accumulation of all powers, legislative, executive, and judiciary, in the same hands may justly be pronounced the very definition of tyranny.

Other Presidents have overreached during times of war, claiming legislative powers, but the courts have reined

them back in. During the Korean war, President Truman, faced with a steel strike, issued an Executive order to seize and operate the Nation's steel mills. The Supreme Court found that the seizure was an unconstitutional infringement on the Congress's law-making power. Justice Hugo Black, writing for the majority, said:

The Constitution is neither silent nor equivocal about who shall make the laws which the President is to execute . . . The Founders of this Nation entrusted the law-making power to the Congress alone in both good times and bad.

To win the war on terrorism, we must remain true to the principles upon which our country was founded. This Administration's detention and interrogation policies are placing our troops at risk and making it harder to combat terrorism.

Former Congressman Pete Peterson of Florida, a man I call a good friend and a man I served with in the House of Representatives, is a unique individual. He is one of the most cheerful people you would ever want to meet. You would never know, when you meet him, he was an Air Force pilot taken prisoner of war in Vietnam and spent 6½ years in a Vietnamese prison. Here is what he said about this issue in a letter that he sent to me. Pete Peterson wrote:

From my 6½ years of captivity in Vietnam, I know what life in a foreign prison is like. To a large degree, I credit the Geneva Conventions for my survival. . . . This is one reason the United States has led the world in upholding treaties governing the status and care of enemy prisoners: because these standards also protect us. . . . We need absolute clarity that America will continue to set the gold standard in the treatment of prisoners in wartime.

Abusive detention and interrogation policies make it much more difficult to win the support of people around the world, particularly those in the Muslim world. The war on terrorism is not a popularity contest, but anti-American sentiment breeds sympathy for anti-American terrorist organizations and makes it far easier for them to recruit young terrorists.

Polls show that Muslims have positive attitudes toward the American people and our values. However, overall, favorable ratings toward the United States and its Government are very low. This is driven largely by the negative attitudes toward the policies of this administration.

Muslims respect our values, but we must convince them that our actions reflect these values. That's why the 9/11 Commission recommended:

We should offer an example of moral leadership in the world, committed to treat people humanely, abide by the rule of law, and be generous and caring to our neighbors.

What should we do? Imagine if the President had followed Colin Powell's advice and respected our treaty obligations. How would things have been different?

We still would have the ability to hold detainees and to interrogate them

aggressively. Members of al-Qaida would not be prisoners of war. We would be able to do everything we need to do to keep our country safe. The difference is, we would not have damaged our reputation in the international community in the process.

When you read some of the graphic descriptions of what has occurred here—I almost hesitate to put them in the RECORD, and yet they have to be added to this debate. Let me read to you what one FBI agent saw. And I quote from his report:

On a couple of occasions, I entered interview rooms to find a detainee chained hand and foot in a fetal position to the floor, with no chair, food or water. Most times they urinated or defecated on themselves, and had been left there for 18-24 hours or more. On one occasion, the air conditioning had been turned down so far and the temperature was so cold in the room, that the barefooted detainee was shaking with cold. . . . On another occasion, the [air conditioner] had been turned off, making the temperature in the unventilated room well over 100 degrees. The detainee was almost unconscious on the floor, with a pile of hair next to him. He had apparently been literally pulling his hair out throughout the night. On another occasion, not only was the temperature unbearably hot, but extremely loud rap music was being played in the room, and had been since the day before, with the detainee chained hand and foot in the fetal position on the tile floor.

If I read this to you and did not tell you that it was an FBI agent describing what Americans had done to prisoners in their control, you would most certainly believe this must have been done by Nazis, Soviets in their gulags, or some mad regime—Pol Pot or others—that had no concern for human beings. Sadly, that is not the case. This was the action of Americans in the treatment of their prisoners.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. DURBIN. Mr. President, I ask unanimous consent for 3 additional minutes.

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

Mr. DURBIN. It is not too late. I hope we will learn from history. I hope we will change course. The President could declare the United States will apply the Geneva Conventions to the war on terrorism. He could declare, as he should, that the United States will not, under any circumstances, subject any detainee to torture, or cruel, inhuman, or degrading treatment. The administration could give all detainees a meaningful opportunity to challenge their detention before a neutral decisionmaker.

Such a change of course would dramatically improve our image and it would make us safer. I hope this administration will choose that course. If they do not, Congress must step in.

The issue debated in the press today misses the point. The issue is not about closing Guantanamo Bay. It is not a question of the address of these prisoners. It is a question of how we treat these prisoners. To close down Guantanamo and ship these prisoners off to

undisclosed locations in other countries, beyond the reach of publicity, beyond the reach of any surveillance, is to give up on the most basic and fundamental commitment to justice and fairness, a commitment we made when we signed the Geneva Convention and said the United States accepts it as the law of the land, a commitment which we have made over and over again when it comes to the issue of torture. To criticize the rest of the world for using torture and to turn a blind eye to what we are doing in this war is wrong, and it is not American.

During the Civil War, President Lincoln, one of our greatest Presidents, suspended habeas corpus, which gives prisoners the right to challenge their detention. The Supreme Court stood up to the President and said prisoners have the right to judicial review even during war.

Let me read what that Court said:

The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions could be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism.

Mr. President, those words still ring true today. The Constitution is a law for this administration, equally in war and in peace. If the Constitution could withstand the Civil War, when our Nation was literally divided against itself, surely it will withstand the war on terrorism.

I yield the floor.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands in adjournment until 9:30 a.m., Wednesday, June 15, 2005.

Thereupon, the Senate, at 7:19 p.m., adjourned until Wednesday, June 15, 2005, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate June 14, 2005:

THE JUDICIARY

THOMAS CRAIG WHEELER, OF MARYLAND, TO BE A JUDGE OF THE UNITED STATES COURT OF FEDERAL CLAIMS FOR A TERM OF FIFTEEN YEARS VICE DIANE GILBERT SYPOLT, RETIRED.

MARGARET MARY SWEENEY, OF VIRGINIA, TO BE A JUDGE OF THE UNITED STATES COURT OF FEDERAL CLAIMS FOR A TERM OF FIFTEEN YEARS VICE ROBERT H. HODGES, JR., RETIRED.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be general

LT. GEN. NORTON A. SCHWARTZ, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be brigadier general

COL. WILLIAM N. MCCASLAND, 0000

IN THE ARMY

THE FOLLOWING ARMY RESERVE OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C. SECTIONS 1552 AND 12203:

To be brigadier general

COL. GILBERTO S. PENA, 0000

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be brigadier general

COL. RODNEY J. BARHAM, 0000

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER WHO IS CURRENTLY IN THE UNITED STATES ARMY RETIRED RESERVE FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTIONS 1552 AND 12203:

To be brigadier general

COL. LARRY L. ARNETT, 0000

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER, WHO IS CURRENTLY IN THE UNITED STATES ARMY RETIRED RESERVE, FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTIONS 1552 AND 12203:

To be brigadier general

COL. OTIS P. MORRIS, 0000

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS TO THE GRADE INDICATED UNDER TITLE 10, U.S.C. SECTION 5046:

To be brigadier general

COL. JAMES C. WALKER, 0000

IN THE NAVY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be commander

RICHARD W. HAUPT, 0000
DANIEL J. HERNANDEZ, 0000
GREGORY L. HICKS, 0000
ROBERT S. MEHAL, 0000
ALVIN A. PLEXICO, JR., 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be commander

RONALD M. BISHOP, JR., 0000
DANIEL J. CHISHOLM, 0000
WILLIAM S. DILLON, 0000
MICHAEL J. HARMAN, 0000
SCOTT M. HERZOG, 0000
MARK A. HUNT, 0000
ALBERT G. MOUSSEAU, JR., 0000
PETER S. OLEP, 0000
ANGELO R. L. SMITHA, 0000
NORMAN M. TOBLER II, 0000
ANTHONY S. VIVONA, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be commander

CHERYL J. COTTON, 0000
MARY L. DIAZ, 0000
TIFFANY M. GRAVEDEPERALTA, 0000
CAROL M. KUSHMIER, 0000
JANET E. LOMAX, 0000
ROMUEL B. NAFARRETE, 0000
THOMAS G. ROULSTON, 0000
STUART C. SATTERWHITE, 0000
CHARMAINE Y. SAVAGE, 0000
ERIN G. SNOW, 0000
LISA M. TRUESDALEHERBERT, 0000
TRACY D. WHITELEY, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be commander

ALBERT R. COSTA, 0000
JOHN S. CRAWMER, 0000
JOHN M. FARWELL, 0000
GARY L. HACKADAY, 0000
TERRENCE E. HAMMOND, 0000
BRIAN K. JACOBS, 0000
EDGAR LUCAS, 0000
BARBARA J. MYTYCH, 0000
JAMES M. PARISH, 0000
TIMOTHY H. PFANNENSTEIN, 0000
JOSEPH A. RODRIGUEZ, 0000
SCOTT A. SAMPLES, 0000
EUGENE A. SANTIAGO, 0000
CHRISTOPHER S. WIRTH, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be commander

DAVID J. BYERS, 0000
BRIAN D. CONNON, 0000
RAYMOND R. DELGADO III, 0000
DANIEL P. ELEUTERIO, 0000
JOHN A. FURGERSON, 0000
DENISE M. KRUSE, 0000
STEPHEN D. MARTIN, 0000
DAVID W. MCDOWELL, 0000
HENRY A. MILLER, 0000
OSCAR E. MONTERROSA, 0000
JOHN A. OKON, 0000
DAVID M. RUTH, 0000
PETER J. SMITH, 0000
MARC T. STEINER, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be commander

JASON W. CARTER, 0000
MARK G. FICKEL, 0000
MARIE T. GORDON, 0000
MICHELLE R. HILLMEYER, 0000
VIRGINIA T. LAMB, 0000
THOMAS W. LECHLEITNER, JR., 0000
JEFFREY B. LITTLE, 0000
JOHN A. MACDONALD, 0000
MARIANNA B. MAGNO, 0000
MARGARET L. MARSHALL, 0000
JAMES H. MILLS, 0000
SHAWN P. MURPHY, 0000
VERONIQUE L. STREETER, 0000
JESSICA A. SZEMKOW, 0000
JOHN A. WATKINS, 0000
DAVID G. WIRTH, 0000
LAURA G. YAMBRICK, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be commander

CLIFFORD W. BEAN III, 0000
LYNN T. CHOW, 0000
CHRISTOPHER A. CHRISLIP, 0000
MICHAEL A. CONNER, 0000
JAMES C. DIFPELL, 0000
JEFFREY W. GRAY, 0000
ANTHONY P. HANSEN, 0000
BARBARA L. LOPEZ, 0000
BRYAN S. LOPEZ, 0000
ERIC F. MANNING, 0000
KEVIN K. MISSEL, 0000
ABRAHAM K. MITCHELL, 0000
WILLIAM K. MORENO, 0000
JOSEPH P. PUGH, 0000
JEFFREY S. SCHEIDT, 0000
GEORGE F. TRICE, JR., 0000
DONNA M. YOUNG, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be commander

THOMAS J. ANDERSON, 0000
JESS W. ARRINGTON, 0000
MICHAEL J. BARETELA, 0000
BRADFORD P. BITTLE, 0000
SCOTT M. BROWN, 0000
DANNY K. BUSCH, 0000
EUGENE C. CANFIELD, 0000
JOHN A. CHRISTENSEN, 0000
WILLIAM E. COBB, 0000
MICHAEL J. DUFEK, 0000
MARK V. GLOVER, 0000
DARLENE K. GRASDOCK, 0000
DARREN S. HARVEY, 0000
HUGH J. HUCK III, 0000
JAMES K. KALOWSKY, 0000
MARK A. LEARY, 0000
RUSSELL E. LEGGEAR, 0000
KEITH W. LEHNHARDT, 0000
JOHN J. LUND, 0000
GERALD W. MACKAMAN, 0000
ERIK H. MARTIN, 0000
WILLIAM B. MCNEAL, 0000
CASEY J. MOTON, 0000
MARK H. OESTERREICH, 0000
DOUGLAS B. OGLESBY, 0000
KEITH A. PETERSON, 0000
ROBERT D. PHILLIPS, 0000
AMY J. POTTS, 0000
DAVID J. PRICE, 0000
JOSEPH P. REASON, JR., 0000
PETER J. RYAN, JR., 0000
JAMES R. SMITH, 0000
JOHN W. SPRAGUE, 0000
JOHN J. SZATKOWSKI, 0000
MARK E. THORNELL, 0000
ALLAN R. WALTERS, 0000
MICHAEL ZIV, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be commander

JASON L. ANSLEY, 0000
CARLTON R. BLOUNT, 0000
CHRISTOPHER C. BONE, 0000
STEVEN C. BORAZ, 0000
SCOTT E. BREES, 0000
DAVID C. CRISSMAN, 0000