The al-Qaeda terrorist leader has indicated that Iraq is a central battle-
field for this war, certainly in terms of terrorism. And our people continue,
course, to do well in spite of the deadly insurgency. That is a tough thing.
The Iraqis are moving forward.

And the Iraqis are moving forward.

There are now 97 Iraqi army battalions conducting operations. Thirty-three
Iraqi army battalions have assumed their own areas of responsibility. This
is a good thing. The Iraqi navy is guarding its coastline and protecting
offshore oil platforms. The Iraqi air force is moving supplies throughout
the country. Iraqi border police are manning 170 border forts and 22 ports of
entry.

Certainly, there is a lot to do yet. There are some things that are happening
that are surprising. There is a great deal of optimism about the living
conditions improving. Time magazine and others did some analysis
and showed living conditions were rated positively for 7 out of 10 Iraqis. I
presume that is a legitimate sort of sample. At any rate, it certainly
sounds so. Average household income has soared some 60 percent in the last
20 months. It is only $263, but nevertheless that is substantially more than
they had.

So in any event, we have a challenge yet before us. I think there is increas-
ing recognition that we are there until our job is done; that our job is to
turn it over to the Iraqis; that we ought to indeed move and continue to
move towards doing that as soon as we can; that the reduction of our troops,
as soon as possible, is the goal of all of us. I think the change in the role cer-
tainly is a goal as well. And that, too, is happening.

So I guess really what I am trying to say is there is good evidence that
things are going well—not as well as we would have liked. There are
improvements being made. We are moving towards our goal. The goal is
to be able to turn this back over to the Iraqis, to return our folks home as
soon as possible. Everyone agrees with that: as soon as possible. There is al-
ways room for disagreement as to what is necessary, of course, to be able to
do that.

But despite the naysayers we hear here, the Iraqis are generally optim-
istic. A recent ABC News poll showed that 70 percent of Iraqis sampled said
life in Iraq was “good.” So in addition to that, of course, the actions that are
being taken are being felt in Egypt, Libya, Lebanon, Kuwait, and Saudi
Arabia. So we are having some sort of an impact in that whole Middle East
area, which is, of course, what we had hoped to be able to do.

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area, which is, of course, what we had hoped to be able to do.
Similarly, other provisions of the PATRIOT Act have been conceded to be important: the provisions on obtaining records, on wiretaps—although subject to some limitations, and I voted against that provision then the bill was up shortly after the 9/11 attacks in 2001—and provisions on delayed notice warrants. And there are many provisions which there has been general agreement ought to be retained.

There have been questions raised, and appropriately so, about the sweep of the PATRIOT Act and whether it could accomplish its designed purposes while providing more protection for civil rights and civil liberties. A good bit of the public debate—most of the public debate—has been focused on those provisions. The conference report makes vast improvements on existing law on items such as obtaining business records, the so-called library records, the provisions on wiretaps—although subject to some limitations, and I voted against that provision then the bill was up shortly after the 9/11 attacks in 2001—and provisions on delayed notice warrants. And there are many provisions which there has been general agreement ought to be retained.

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there would be a warrant to search someone’s house or apartment surreptitiously; that is, without giving notice to the individual.

Under existing law, under the PATRIOT Act, the Government must notify you within a reasonable period of time. Reasonable has no definitive limit, is vague and indefinite; it is open to very wide interpretation as to what constitutes reasonable. The conference report imposes a maximum time limit of 30 days, which can be extended; however, only if certain specific criteria were met.

The Senate bill had a 7-day notice requirement. The House bill had a 180-day requirement, and the compromise was 30 days. So most of the provisions of the Senate bill or most of the substance of the Senate bill was agreed to. Now you have a set time limit, unless cause is shown to extend it; again, what I would characterize fairly as a vast improvement. Then there are provisions for roving wiretap laws. I have always been concerned about the intrusion of privacy under wiretaps. In my days as district attorney, I was the sole district attorney among the 67 Pennsylvania counties to oppose legislation. When the PATRIOT Act bill came to the Senate shortly after September 11, I was one of the few Senators who voted against the wiretap provision.

Law enforcement has made a case in support of a roving wiretap and the PATRIOT Act conference report protects civil liberties additionally by requiring that there be an identification of the individual, a description, and that there be a showing that the individual will seek to try to evade detection of the wiretap so that on that provision, as well, there is an enhancement of civil liberties.

Perhaps the most contentious issue that was taken up during the conference was the issue of the sunset. The House of Representatives asked for a sunset of 10 years in their bill. The Senate bill has a sunset of 4 years. The House proposed, in a very forceful way, a compromise at 7 years, splitting the difference. The sunset provision is very important because all of the provisions of the PATRIOT Act expire at the end of the sunset unless there is a renewal. This puts law enforcement on notice that there will be oversight by the Judiciary Committees of both Houses, and the Senate Judiciary Committee has been very diligent on oversight and is committed to extensive oversight on this bill however it comes out.

There were very long, detailed, extensive negotiations. I thank the White House. I thank the President, who was personally acquainted with this issue. I had the opportunity to travel with him to Philadelphia earlier today where he made a speech about Iraq. He said to me, he exceeded my expectations if he fulfilled your request for assistance. For instance, getting a 4-year sunset, there would be a little more receptivity for the bill. I am paraphrasing what was involved.

This issue went to the highest level of the Federal Government. We had tremendous assistance from the White House on the sunset provision. Not only was the President conversant with it, as I have stated, but the Vice President was involved in the negotiations, the Chief of Staff, Andrew Card, whom I talked to on a number of occasions, and others in the White House. This 4-year sunset is a major, major, major improvement for civil liberties interests in that these provisions will be in existence for 7 years, 6, 5, but only for 4 years.

In essence, we have a bill which is not perfect. I don’t know that we deal in perfection in the legislative process. The whole art of politics and legislation is the art of accommodation, conciliation, and compromise, which is a worthwhile concept. That is the way we work in a democracy. No one gets their way entirely.

If I had my preference, we would have taken the Senate bill lock, stock, and barrel, and have been it. But we have a bicameral legislature and considerations and issues raised by the House of Representatives. I think again, are fairly raised and fairly stated. I explicitly compliment Chairman Specter, Chairman Senckenbrenner for his cooperation and his good work on this bill.

That is, believe it or not, a somewhat abbreviated version of this legislation, this complex legislation.

We had a letter from six of our colleagues—Senators Sununu, Senator Mikuowski, Senator Durbhn, Senator Feingold, Senator Salazar—and I ask unanimous consent that a copy of their letter to me and a copy of my letter to them be printed in the RECORD.

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

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, November 17, 2005.
HON. ARLEN SPECTER,
Chairman, U.S. Senate Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.
HON. PATRICK LEAHY,
Ranking Member, U.S. Senate Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.
HON. PAT ROBERTS,
Chairman, U.S. Senate Select Committee on Intelligence, Hart Senate Office Building, Washington, DC.
HON. JOHN D. ROCKEFELLER IV,
Ranking Member, U.S. Senate Select Committee on Intelligence, Hart Senate Office Building, Washington, DC.
DEAR CHAIRMAN SPECTER, CHAIRMAN ROBERTS, RANKING MEMBER LEAHY, AND RANKING MEMBER ROCKEFELLER: We write to express our deep concern about the draft Patriot Act reauthorization conference report made available to us early this afternoon. As you know, the Senate version of the bill, passed by unanimous consent in July, while itself a compromise that resulted from intense negotiations by Senators from all sides of the partisan and ideological divides. Unfortunately, the Senate’s draft re-treats significantly from the bipartisan consensus we reached in the Senate. It does not accomplish what we and many of our colleagues in the Senate believe is necessary—a reauthorization bill that continues to provide law enforcement with the tools to investigate possible terrorism while making reasonable changes to the original law to protect innocent people from unnecessary and intrusive government surveillance. We strongly urge you to see significant movement back toward the Senate position in the following areas:

1. SECTION 215

The draft conference report would allow the government to obtain sensitive personal information without a court order. This would allow government fishing expeditions. As business groups like the U.S. Chamber of Commerce have argued, the government should be required to convince a judge that the records they are seeking have some connection to a suspected terrorist or spy.

The draft conference report does not permit the recipient of a Section 215 order to challenge its automatic, permanent gag order. Courts have held that similar restrictions violate the First Amendment. We believe that the recipient of a Section 215 order is entitled to meaningful judicial review of the gag order.

2. NATIONAL SECURITY LETTERS

The draft conference report does not provide meaningful judicial oversight over NSL’s gag order. It requires the court to accept as conclusive the government’s assertion that a gag order should not be lifted, unless the court determines the government is acting in bad faith. The recipients of NSLs are entitled to meaningful judicial review of a gag order.

The draft conference report makes it a crime, punishable by up to one year in prison, for individuals to disclose that they have received an NSL, even if they believe their rights have been violated. A gag order should only be a crime if the NSL recipient intends to obstruct justice.

3. SUNSETS

The draft conference report includes seven-year sunsets, which are too long. Congress should have the opportunity to again review the controversial provisions of the Patriot Act before the final year of the next presidential term. Four-year sunsets would ensure accountability and flexibility.

The draft conference report does not set the NSL authority. In light of recent revelations about possible abuses of NSLs, the NSL provision should expire within four years so that Congress will have an opportunity to review the use of this power.

4. SNARK AND PEEK WARRANTS

The draft conference report requires the government to notify the target of a “snark and peek” search no earlier than 30 days after the search, rather than within seven days, as the Senate bill provides and as President Bush has advocated. The conference report should include a presumption that notice will be provided within a significantly shorter period in order to better protect Fourth Amendment rights. The availability of additional 90-day extensions means that a shorter initial time frame should not be a hardship on the government.

In the past several years, our bipartisan coalition has been working together to highlight and fix the civil liberties problems posed by the Patriot Act. We introduced the Senate Act to address these concerns, while still maintaining important law enforcement powers needed to combat terrorism. We cannot support a conference report that would weaken the modern civil liberties that were agreed to unanimously in the Senate.
The conference report, in its current form, is unacceptable. We hope that you, as members of the conference committee, will consider making the changes set forth above. If further discussion is made; we will work to stop this bill from becoming law. Thank you for your consideration.

Sincerely,

LARRY E. CRAIG
JOHN E. SUNUNU
LISA MURKOWSKI
DICK DURBIN
KURT V. VENGTOLD
KEN SALAZAR

U.S. SENATE
COMMITTEE ON THE JUDICIARY.
Washington, DC.

Hon. LARRY E. CRAIG.
Hon. JOHN E. SUNUNU.
Hon. LISA MURKOWSKI.
Hon. DICK DURBIN.
Hon. RICHARD J. DURBPre.
Hon. RUSSELL D. FEINGOLD.
Hon. KEN SALAZAR.

Dear Colleagues: I am in receipt of your November 17 letter outlining your concerns about the draft Conference Report reauthorizing the USA PATRIOT Act. My purpose in writing is to explain why I am nonetheless writing is to explain how the final Conference Report addresses the issues you have identified; or, where the issues are not addressed, to explain why I am nonetheless comfortable with the bill. Ultimately, my aim is to demonstrate to you that the bill is one civil libertarians can, and should, embrace.

Addressing each of your concerns in turn:

1. SECTION 215

The draft Conference Report would allow the government to obtain sensitive personal information on a mere showing of relevance. This would allow government fishing expeditions. As business groups like the U.S. Chamber of Commerce have argued, the government should be required to convince a judge that the records they are seeking have some connection to a suspected terrorist or spy.

Although the Conference Report does authorize the FISA court to issue an order under Section 215 upon a showing of relevance, I respectfully disagree that the draft report establishes a meaningful safe-guard is that every order under Section 215 at a later time.

2. SECTION 215

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3. SECTION 215

The draft Conference Report does not permit the recipient of a Section 215 order to mit the recipient of a Section 215 order to demonstrate that the individual is working on behalf of a foreign power or a known terrorist organization.

In addition, the Conference Report includes measures that would alter and strengthen the provisions of Section 215 that neither the Senate bill nor the House bill contained. First, the Conference Report includes a comprehensive audit by the Justice Department’s famously independent Inspector General of law enforcement’s use of Section 215. The Inspector General’s report would provide the FISA judge with a comprehensive view of the initial and post-authorization of the PATRIOT Act. Second, the Conference Report would permit, for the first time, public reporting of the number of Section 215 orders sought and granted. A third safe-guard against the possibility of fishing expeditions is the Conference Report’s provision that Section 215 orders may not be used for the purpose of conducting threat assessments. This requirement ensures that Section 215 will be used only during those authorized investigations that have progressed beyond the initial stages. A fourth new safeguard is that every order under Section 215 will require minimization procedures that sharply curtail the retention and dissemination of information concerning United States citizens. These minimization procedures will prevent the government from stockpiling information on persons only maintaining records on citizens who are only incidental to the investigation.

Finally, it is important to point out that the conference obtained all of these additional protections without sacrificing the critical improvements over the current Section 215 that made the Senate’s PATRIOT bill attractive to so many: (1) the requirement of a statement of facts to accompany an application for an order under Section 215; (2) the opportunity for the FISA judge to review, and to reject, the FBI’s application for a 215 order; (3) the express right of recipients to consult legal counsel and seek judicial review of 215 orders; (4) the requirement of approval by senior FBI officials before the government can seek library records, medical records, educational records, gun records, and other sensitive documents; (5) the enhanced reporting to Congress on the use of Section 215, including specific information concerning requests for the inclusion of additional categories; (6) the system of record retaining for the NSL that neither the Senate bill, which passed this body by unanimous consent. See S. 1389 §8(b)(2) (“In reviewing a nondisclosure requirement, the certification by the Secretary of State that disclosure of the information would endanger the national security of the United States or interfere with diplomatic relations shall be treated as conclusive unless the court finds the certificate was made in bad faith.”); see also H.R. 3199 §16.

The conference adopted an additional safeguard ensuring that the presumption will be used only sparingly. Under the Conference Report, the Attorney General, the Deputy Attorney General, an Assistant Attorney General, the Director of the FBI, or an official of similar stature in another agency must personally make the requisite certification in order to obtain the conclusion or certification by “the Government,” generally. In light of this additional safeguard over and above what was in either bill, as well as additional protective public reporting and Inspector General reports concerning NSLs, my hope is that this provision will not prevent you from supporting the Conference Report.

The Conference Report makes it a crime, punishable by up to one year in prison, for individuals to disclose that they have received an NSL, even if they believe their records have been violated. Such a provision makes receipt of an NSL a criminal sale or take of a defense article in the possession of the United States. I am concerned that the conference’s action is not necessary to prevent fraud, or to protect the confidentiality of individuals who may receive NSLs, and am particularly concerned that an NSL should only be a crime if the NSL recipient intends to obstruct justice.
The final Conference Report addresses this concern in full. After intense negotiations involving various Senators and House Members and the Senate and House leadership, the conference report for knowledge of the disclosure of an NSL was struck from the bill. Consistent with your request, violation of the NSL nondisclosure provision is only a crime if the NSL recipient intends to obstruct justice.

At the same time, I did want to take the opportunity to clarify some facts about the NSL nondisclosure requirement, which will not have the onerous impact on individual rights that is implied. First, in contrast to current law, NSLs will not automatically carry an attached nondisclosure statement. Second, and also in contrast to current law, the Conference Report includes a detailed mechanism for judicial review of the nondisclosure requirement. The end result is that any individual whose rights may have in fact been violated will have a forum in which to petition for relief.

3. SUNSETS

The draft Conference Report includes seven-year sunsets which are too long. Congress should have the opportunity to again review the controversial provisions of the Patriot Act before the final year of the next presidential term. Four-year sunsets would ensure accountability and effective oversight.

The final Conference Report addresses this concern in full. After intense negotiations involving various Senators and House Members, the Senate and House leadership, and the Administration, the seven-year sunsets were removed.

In addition, Section 106A of the Conference Report, which does not have an analogue in either the Senate or House bill, provides that the Inspector General of the Department of Justice will conduct two comprehensive audits of the use of Section 215. The House bill and is a significant improvement over the Senate bill and is a significant improvement over the Senate bill. The Conference Report provides that the Inspector General will conduct audits of the use of Section 215 that neither the Senate bill nor the House bill contained. First, the conference report adds several safeguards to prevent abuse of Section 215 that neither the Senate bill nor the House bill contained. First, the conference report requires a comprehensive audit by the Justice Department’s independent Inspector General of law enforcement use of Section 215. Second, the conference report will permit, for the first time, public reporting of the total number of Section 215 orders sought and granted. A third safeguard is the conference report’s provision that Section 215 orders may not be used to acquire information that has already been acquired by any means. A fourth new safeguard is that every order under Section 215 will require minimization procedures that curtail the reassembly and dissemination of information concerning United States citizens.

The conference report also retains key provisions from the Senate bill: (1) the requirement of a statement of facts to accompany an application for an order under Section 215; (2) the express vesting of discretion in the FISA judge to review, and to reject, the FBI’s application for a 215 order; (3) the express permission to retain legal counsel and seek judicial review of 215 orders; (4) the requirement of approval by the
Mr. SPECTER. The schedule which is currently anticipated is that the House of Representatives will take up this bill and vote on Wednesday and the Senate will take up a motion to proceed to vote on Wednesday. There is no timetable for a filibuster. A vote to proceed on Monday is anticipated, but the schedule is not definitive. The Senate will vote on Wednesday, but it is not clear whether the vote will be a cloture vote or a roll call vote. The House will vote on Thursday, and the Senate will vote on Thursday as well. The final vote in the House will be held on Friday, and the Senate will vote on Friday. The conference report is expected to be released on Friday evening.

Mr. SPECTER. The conference report makes explicit the right of the Justice Department to obtain a wiretap order. The conference report also makes explicit the right of the Senate to channel all applications for orders under Section 215 into the three categories established in its reauthorization bill. By establishing three categories to channel all applications for orders under Section 215 into the three categories the Senate established in its reauthorization bill, the conference report makes explicit the right of the Senate to channel all applications for orders under Section 215 into the three categories established in its reauthorization bill.

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