

and thorough analysis of how we came to know what we knew and how we came to make the decisions about matters that came before us. We think there is no doubt that Saddam Hussein used weapons of mass destruction against his own people. We know that. That is indisputable. Where it went subsequently I don't know, and people are shocked that we have not found them. We know that the French intelligence agency—the French Government opposed our entry into the war—believed he had weapons of mass destruction.

Those matters were very important. And what I am so glad about is people have heard what Senator KYL said and discussed, which is relevant to this Senate. We knew these things, fellow Senators. We discussed these things. Grown people make decisions based on the best evidence they have.

We had many hearings, top secret briefings, and every Senator could go. We heard the argument. We heard the evidence. We cross-examined, and we heard the uncertainties and certain levels expressed by the authorities that came before us. Then we came into this body and we voted to send our soldiers to execute our policy in harm's way. And we owe those soldiers our support. We don't need to be undermining the President, or even ourselves and our system, as in this circumstance making the policy. We voted by a 78-to-22 vote to make it more difficult to achieve and to place our soldiers at greater risk.

I thank the Senator for his wonderful comments.

#### THE PATRIOT ACT

Mr. KYL. Mr. President, I want to get to the matter I came to speak on, the PATRIOT Act.

The Senator from Massachusetts spoke to us about having respect for one of our colleagues in the other body who is, in fact, a patriot and who certainly should never be called a coward.

I also want to ask that same deference to those in the Defense Department and others who were doing their duty for our country, who could have been in the private sector making a lot of money and taking care of their families but chose to serve their country in another way in later life by acting on behalf of all of us in matters of national security. The Secretary of Defense, Don Rumsfeld, Paul Wolfowitz, Doug Fife, who headed the office I spoke of, these are patriots. And for anyone to suggest that someone like Doug Fife or Don Rumsfeld or Paul Wolfowitz were misleading anyone is, frankly, about as low as you can get. And even loose words such as "unlawful" have been thrown about.

This is a very bad state of affairs that we have come to when that is the kind of discourse we have in talking about people who have served our country honorably. I hope my colleagues will join me in trying to elevate the

rhetoric rather than taking it down further. And that applies to everybody—Democrat and Republican Members of Congress, or the administration.

I came to talk about the PATRIOT Act. I would like to make some comments because we are in the middle of a big debate in the Senate and House about the reauthorization of the PATRIOT Act. If we don't reauthorize the PATRIOT Act, all of the tools that we have given to our law enforcement and intelligence community to help us win the war on terror are going to—not quite, but most of those tools will cease to exist. They will expire. That is why we have to reauthorize it.

Just as it is important for us to give the men and women in the military the tools they need in the missions we send them on, the war on terror, so, too, it is for us to ensure our law enforcement and our intelligence people have the tools they need to carry out the mission that we ask of them.

In the war on terror, intelligence and the ability to use it in the law enforcement community are critical to our success.

One of the greatest things we accomplished after 9/11 in passing the PATRIOT Act was to tear down the wall that had been created between our intelligence-gathering organizations and law enforcement. They couldn't talk to each other. One could gather information, but they couldn't give it to the other, and vice versa.

As a result, neither were able to do their job in getting information about terrorists and putting out that information to proper and good use.

There is virtually no disagreement that I know of that this part of the PATRIOT Act has been critical to our success since 9/11. Yet there are those on both sides of the aisle in this body who are threatening to hold up the reauthorization of the PATRIOT Act because they haven't gotten their way on every little thing that they want, and some of them don't even know what the conference committee has been negotiating. I am on that conference committee and I know what we have discussed, and I know what is still a matter of issue out there.

I want to talk a little bit about the PATRIOT Act because there is a great deal of ignorance about what this important tool does for our war on terror. And we cannot be ignorant, even though it is a matter of law and a little bit complicated. We don't have the luxury of being ignorant about this. We have to understand it to appreciate it.

I will speak to that for a little bit.

I believe, like some great controversies of the time, history books will record that the controversy over the PATRIOT Act was actually something we will look back on and say, What was all the fuss about? It is a little bit like when President Reagan talked about tearing down the wall and calling the Soviets the "Evil Empire." There was great handwringing. This was not

going to be good for our foreign policy. We look back on it now and say, What was all the fuss about? He was right. It was a good thing.

Those who are threatening to hold up the reauthorization of the PATRIOT Act should have pretty much the same words spoken to them about the wall. This time we are talking about the wall between intelligence and law enforcement. I say to them, "Tear down this wall." We did it in the PATRIOT Act. They are about to let the PATRIOT Act expire because they have some view that every little thing they want has not gotten accomplished in the PATRIOT Act.

This is important business. For those who are threatening to prevent the reauthorization of the PATRIOT Act, I challenge them to come to the Senate today, tomorrow. I will be here. Let's have the debate.

What are the big deals in the PATRIOT Act? The biggest is the wall coming down, as I said. There is no disagreement about that. Yet, it is going to go right back up if we do not act.

The second provision in the PATRIOT Act that people have focused on is the so-called section 215 which allows a FISC, Foreign Intelligence Surveillance Court, to issue subpoenas to produce business records. That authority has been in the law for a long time. But we added it to the PATRIOT Act in order to allow the FBI to seek an order from this special court that was created for:

... the production of tangible things (including books, records, papers, documents, and other items) for an investigation to obtain foreign intelligence information.

Not to obtain foreign intelligence information. And FISC defines "foreign intelligence" as information relating to foreign espionage, foreign sabotage, or international terrorism.

Section 215 is basically a form of subpoena authority, such as that allowed for numerous other types of investigation. A subpoena is merely a request for particular information. Unlike a warrant—and this is important—a subpoena does not allow a government agent to enter somebody's property and take things. It is only a request. If the recipient objects, the Government must go to court and defend the subpoena and seek an order for its enforcement. Most Federal agencies have the authority to issue subpoenas, and many agencies have multiple subpoena authorities.

The Justice Department has identified over 335 different subpoena authorities in the United States Code. One can hardly contend that although the Federal Government can use subpoenas to investigate Mohammed Atta if it suspects he is committing Medicare fraud that it should not be allowed to use the same powers if it suspects he is planning to fly airplanes into buildings. What sense would that make?

Some critics argue that most of the existing authorities are different because section 215 subpoenas do not relate to heavily regulated industries

like some of the other subpoenas. But even subpoenas issued to investigate the industries are used to request information from persons outside the industry. For example, the Small Business Administration is authorized to use subpoenas to aid its fraud investigations. When it uses that subpoena, it can and often does request information from others doing business—from anyone doing business—with the recipient of the SBA loan.

In one important way, the authority in section 215 of the PATRIOT Act is even narrower than the authority given by most subpoena statutes. This is critical. Unlike these other authorities, a section 215 order must be preapproved by a judge. Many people who debate the PATRIOT Act ignore this or do not know it. They say, you do not even have to get a court order. It must be preapproved by a judge. Even grand jury subpoenas, despite their name, are simply issued by a prosecutor conducting a grand jury investigation with no judicial review prior to their issuance.

Chief among the complaints made by critics of this section is that it could be used to obtain records from bookstores or libraries. Some of these critics have even alleged that section 215 would allow the FBI to investigate someone simply because of the book he borrows from the library. Section 215 could, in fact, be used to obtain library records, though neither it nor any other provision of the PATRIOT Act specifically mentioned libraries or in any way is directed at libraries. Section 215 does authorize court orders to produce tangible records and that could theoretically include library records.

Where the critics are wrong is in suggesting a section 215 order could be obtained because of the books that someone reads or Web sites he visits. Section 215 allows no such thing. Instead, it allows an order to obtain tangible things as part of an investigation to obtain foreign intelligence information, information relating to foreign espionage or terrorism or relating to a foreign government or group and national security.

By requiring a judge to approve such an order, section 215 assures these orders will not be used for an improper purpose. And as an added protection against abuse, the PATRIOT Act also requires that the FBI fully inform the House of Representatives and the Senate every 6 months. These checks and safeguards leave FBI agents little room for the types of witch hunts the PATRIOT Act critics conjure up. Any use of the subpoenas, in other words, must be reported to us.

Further, and I ask Members to think about this for a moment, especially in view of some of the criticism that has been leveled at the act, I would like to emphasize there are very good and legitimate reasons why an intelligence or criminal investigation might extend to a bookstore or a library. One exam-

ple former Deputy Attorney General Comey has cited is the investigation of the Unabomber, Ted Kaczynski. Remember that the Unabomber's brother had relayed to Federal agents his suspicion that Ted Kaczynski was behind this decades-long string of mail bomb attacks. At the time, the Unabomber had recently published this manifesto which cited several obscure and ancient texts. In order to confirm the brother's suspicions, Federal agents subpoenaed Ted Kaczynski's library records and discovered that, in fact, he had checked out these same obscure texts cited in the manifesto.

Section 215 also could have been used directly to investigate the perpetrators of the September 11 attacks. How so? We now know that in August of 2001 individuals using Internet accounts registered to Nawaf al Hazmi and Khalid al Midhar used public access to computers in the library of a State college in New Jersey. The computers in the library were used to shop for and review airline tickets on an Internet travel reservation site. Al Hazmi and Al Midhar were hijackers aboard American Airlines flight 77 which took off from Dulles Airport and crashed into the Pentagon.

The last documented visit to the library occurred on August 20, 2001. On that occasion, records indicate that a person using Al Hazmi's account used the library's computer to review September 11 reservations he had previously booked.

In August of 2001, Federal agents knew that al Midhar and al Hazmi had entered the United States. They initiated a search for these individuals because they knew they were associated with al-Qaida. Had the investigators caught the trail of these individuals—and by the way, one of the criticisms in the 9/11 Commission Report was that our Government did not adequately pursue these two individuals; that there was a lot of evidence they could have pieced together. They didn't follow it. They let them out of their sights, at which point they were gone. They knew they were here, but they could not find them. Had they followed the trail of the individual and had the PATRIOT Act already been law, the investigators would have likely used a section 215 to use the library records to see the Internet trail, and history might well be different.

Finally, over half a dozen reports submitted by the Inspector General of the Department of Justice have uncovered no instances of abuse involving section 215. The latest public report indicates this authority has been used approximately three dozen times—not all related to libraries, of course. Section 215 is not used very often. But we know that when Federal agents do use it, it is for an important purpose. I cannot imagine that any one of us would want to stop Federal agents from using section 215 in the way it has been used.

There were those who said we should have some additional restrictions on

section 215; even though it is an important tool, we need it further restricted. So the conference committee said, all right, let's first make sure we have a new statutory relevance standard so there is no question the information obtained has got to be relevant to the foreign intelligence investigation.

Another concession made was that there would be a three-part additional test which would be put in place to presume relevancy if you can satisfy this three-part test. It is going to further complicate things, further delay things. It is not going to be easy for the Justice Department to prove.

Moreover, another layer of bureaucracy was imposed with so-called minimization standards. The Department of Justice would be required to put into regulation limits on how long the material could be kept, who it could be given to, and so on and so on.

Those who had concerns about section 215 brought those concerns forward and those have been negotiated. I know of no further issue relating to section 215 in the conference that Members of either side of the aisle have brought forward. So those of my colleagues who have said we are going to filibuster the conference report on the PATRIOT Act because, among other things, it has this section about library records. They ought to get informed about the section, and they also ought to appreciate the fact that the people who have negotiated this on both sides of the aisle, on both sides of the Capitol, have concluded they are now done with this section. We have put everything in there we need to to further ensure it can never be abused, but we want to retain it as an important part of our tools in fighting terrorism.

The second of the three sections I discuss is section 213, the delayed notice searches. This is the so-called "sneak and peek" search. It is an unfortunate name. Section 213 of the act merely codifies judicial common law, allowing investigators to delay giving notice to the target of a search that a search warrant has been executed against him. Section 213 allows delayed notice of a search for evidence of any Federal criminal offense if a Federal court finds reasonable cause to believe that immediate notice may result in endangering the life or physical safety of an individual, flight from prosecution, destruction, or tampering with evidence, intimidation of potential witnesses, or would otherwise seriously jeopardize the investigation. Notice still must be provided within a reasonable period of the warrant's execution, though this period may be extended for good cause.

The ACLU, in particular, has been critical of section 213. One might think an organization seeking to find fault with this section that deals with the war on terrorism might focus on something other than this particular PATRIOT provision because all it does is codify authority that has been allowed

by the Federal courts for several decades. This is not new. The ACLU alleges that section 213 expands the Government's ability to search private property without notice to the owner. It also states that section 213:

... mark[s] a sea of change in the way search warrants are executed in the United States.

And it finally has charged that as a result of the section 213 authorization of delayed notice, "you may never know what the government has done."

None of these allegations is true. First, the target of a delayed notice search will always eventually "know what the government has done" because section 213 expressly requires that the Government give the target notice of the execution of the warrant "within a reasonable period of its execution." Section 213 clearly and explicitly authorized only delayed notice, not no notice.

Further, section 213 neither "expands the government's ability" to delay notice nor can it even remotely be described as a "sea change" in the law. Twenty-five years ago the U.S. Supreme Court established that "covert entries are constitutional in some circumstances, at least if they are made pursuant to a warrant." That citation is *Dalia v. U.S.* Congress first authorized delayed notice searches 35 years ago in the 1968 Omnibus Crime Control Act. These searches repeatedly have been upheld as constitutional.

In 1990, the U.S. Court of Appeals for the Second Circuit held:

Certain times of searching or surveillance depend for their success on the absence of premature disclosure. The use of a wiretap, or a "bug," or a pen register, or a video camera would likely produce little evidence of wrongdoing if the wrongdoers knew in advance that their conversation or actions would be monitored. When nondisclosure of the authorized search is essential to its success, neither Rule 41 nor the Fourth Amendment prohibits covert entry.

You can see why this is so. There are certain circumstances where you cannot let the "bad guy" know you are listening in on his conversations.

To the extent the ACLU intends to suggest that delayed notice searches are unconstitutional, it bears mention that the U.S. Supreme Court has already addressed that view. I mentioned the 1979 *Dalia* case in which the Supreme Court described that argument as "frivolous."

If anyone would still wish to argue that section 213 is controversial, I would note that on this point, too, the conference committee has resolved the only issue that was in contention. The Senate passed a bill that substantially reenacted section 213 with no restrictions on authority. The bill was, by the way, reported out of the Judiciary Committee on a unanimous rollcall vote, which means even the most vocal critics agreed to it, and it later passed the full Senate by unanimous consent. The only debate in the conference over section 213 is what the presumptive time limit should be for investigators

to return to court to renew the delay-in-notice provision.

The Senate bill included a presumptive delay of 7 days, the House bill a presumptive delay of 180 days, with no provision for longer delay in particular cases. The conference committee has agreed to 30 days. I suggest that is an eminently reasonable compromise. And for all the huffing and puffing about so-called "sneak and peek," this is what the real debate has come down to.

I have one more matter, and I will conclude very quickly, Mr. President.

The other section, the third section, is this one on roving wiretaps. It simply allows terrorism investigators to obtain a wiretap for any phone that a suspect uses rather than limiting the wiretap to a particular phone. Criminal investigations already have this authority. The PATRIOT Act simply updates the law to give terror investigators the same authority. As I said, this particular section is no longer in controversy. To my knowledge, all questions have been resolved in the conference committee on this.

Mr. President, I conclude by noting that the conferees have made a very good-faith effort to iron out differences, to add additional protections, preventions of abuse. What it boils down to is we have a law that finally gives law enforcement and the intelligence community the tools they need to fight terrorism. It brings down the wall that prevented them from cooperating in the past. It provides adequate safeguards to ensure that no liberties are being diminished. It applies only to the investigation of terrorism and crimes by terrorists against the citizens of the United States. It would be a pity if we did not move forward to reauthorize this important piece of legislation before it expires.

I renew my challenge to my colleagues. If anyone wants to discuss this, or debate it, I will be here today. I will be here tomorrow. For that matter, I will be here Monday if they want to do it. It is important we get this done and not leave here until we have given our law enforcement officials the tools they need to protect us.

Mr. LEAHY. Mr. President, the current consideration by the Congress of a rewrite of the USA PATRIOT Act is a significant event. These are important issues, and they have become increasingly important to the American people.

This bill, more than any other, must have the confidence of the American people. I understand that and Chairman SPECTER understands that. I commend the chairman for his commitment to work in a bipartisan manner, both during the committee process and throughout the House-Senate conference. He and I agree with the vast majority of Americans that a reauthorization of the PATRIOT Act's expiring provisions must be accomplished in a bipartisan process, not in a bitter, partisan battle.

The PATRIOT Act suffers from an image problem. This perception prob-

lem stems in large measure because of the rhetoric, practices and secrecy of the Bush administration and the Ashcroft Justice Department. The antidote is clear and it is simple—less secrecy, more congressional oversight, more judicial review and an adjusted balance that better protects the rights and liberties of all Americans.

That is what we produced here in the Senate when first the Senate Judiciary Committee and then the Senate unanimously adopted our PATRIOT Act reauthorization bill. We worked together and we did so in a timely manner, completing our work in July. The Senate appointed conferees immediately. Regrettably, the House did not follow suit. They delayed more than 3 months until November 9, just last week and just a week before Congress was scheduled to recess. We lost 3 months that we could have used to find common ground and create a better bill. Unfortunately, the House Republican leadership played games with the PATRIOT Act while the clock was ticking.

Even last week, with conferees newly appointed by the House, I was hopeful that in our limited time, we could negotiate in good faith and reach a bipartisan, bicameral agreement. We made some progress over the weekend on important issues, reaching a tentative agreement on improved reporting requirements that would shine some light on the use of certain surveillance techniques. I believed that we were close to striking a reasonable balance on the core civil liberties issues raised by the PATRIOT Act.

But on Sunday, the Bush administration stepped in and, with the acquiescence of congressional Republicans, the bipartisan negotiations were abruptly ended. The curtain came down. Democratic participation was excluded from the process. As a result the tentative agreements were scuttled based on Bush administration demands.

Further impeding bipartisan progress, the conference report was being loaded up with controversial provisions that had nothing to do with the PATRIOT Act, terrorism, or anything in either the House or Senate-passed bills. The PATRIOT Act suddenly was being used as a vehicle of convenience to pass laws that could not be passed on their own merit. This overreaching by the House Republican conferees caused more time to be lost, and because of the ill-advised choices that were made late in this process, the conference report is not what it should be.

The needless and divisive chapter in the late stages of what should have been—can what could have been—an open and bipartisan conference threatens to undermine national consensus on this bill. Sadly, it also threatens national confidence in how we as a Congress can best address these important issues. Before the Bush administration butted in and grabbed the reins, we were close to a compromise that could have been acceptable to almost all members of Congress and to the American public. This is not that conference

report. I am not sure that this conference report can win the confidence of the American people. Rather than seek common ground with the Congress and with the American people that we represent, the Bush administration and Republican conferees have taken and abused their power and taken terrible advantage.

Just 2 months ago, we observed the fourth anniversary of the horrific attacks of September 11, 2001. In the aftermath of the attacks, Congress moved quickly to pass anti-terrorism legislation. The fires were still smoldering at Ground Zero when the USA PATRIOT Act became law on October 30, 2001, just 6 weeks after the attacks.

Many of us here today worked together in a spirit of bipartisan unity and resolve to craft a bill that we had hoped would make us safer as a nation. Freedom and security are always in tension in our society, and especially so in those somber weeks after the attacks, but we tried our best to strike the right balance. One of the fruits of that bipartisanship was the sunset provisions contained in the PATRIOT Act. These sunsets have allowed us some opportunity to obtain key information Americans have a right to know, and to revisit these matters to add more sunshine and oversight. Those sunsets were supported by Dick Arme, the Republican House majority leader and by me in the Senate an unlikely duo I concede, but in this case, a successful and productive alliance that proved to benefit the American people. We prevailed, thank goodness.

Sadly, the Bush administration and Republican congressional leadership has largely squandered this opportunity to refine the PATRIOT Act. Instead, they are insisting on a continuing assault on habeas corpus rights and adding other extraneous matters. Working with Chairman SPECTER, we are insisting on modifications to the conference report that will make it more protective of civil liberties and increase opportunities for oversight, including a 4-year sunset.

I thank Senators KENNEDY, ROCKEFELLER and LEVIN for their efforts to improve the draft circulated to us this week. I know that some Senate Republican conferees were not satisfied that the draft fully protected Americans' civil liberties and thank them for working to improve this important measure. I hope that the other conferees will work with us to arrive at a conference report that we all can support and that we can take to the American people together.

If the Bush administration would cooperate with us—the people's representatives—we will be better able to refine the authorities and uses of national security letters and the other tools provided in the law. Without that cooperation, with the veil of secrecy cloaking so much activity, neither Congress nor the American people will know or trust what the government is doing.

The PRESIDING OFFICER (Mr. SESSIONS). The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I thank the Senator from Arizona for the passion and commitment he has to the protection of our law enforcement officers, who are doing a great job for us. I appreciate what he is saying and doing.

#### UNANIMOUS CONSENT AGREEMENT—CONFERENCE REPORT TO ACCOMPANY H.R. 2528

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that there be 1 hour of debate equally divided between the two managers in relation to the conference report to accompany H.R. 2528, the Military Quality of Life and Veterans Affairs appropriations bill. I further ask consent that following the use or yielding back of time, and when the Senate then receives the conference report, it be immediately considered, and the conference report be adopted, with the motion to reconsider laid upon the table.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mrs. HUTCHISON. Mr. President, I believe what we bring before the Senate today is a product worthy of our support. The conference report has been crafted under two different approaches. What I believe has emerged is not only a good compromise but also makes strides in both oversight and policy. What has emerged is a solid recommendation.

I thank my chairman, Senator COCHRAN, for his leadership. This subcommittee faced some extreme budgetary shortfalls, and without his leadership, and basically allocating more resources to this committee, we would not be able to bring this conference report to the Senate today.

I also especially thank my ranking member, Senator FEINSTEIN, for her constant support and willingness to work together. I thank her staff as well: Christian Evans, B.G. Wright, and Chad Schulken for their hard work and professionalism, along with my great staff, Tammy Cameron, Dennis Balkham, and Sean Knowles. It has been a team effort and I appreciate that so much.

The military construction portion of our bill provides \$6.2 billion for military construction, \$5.1 billion of which is for Active Component construction, and \$1.1 billion for Reserve Component construction. It also includes \$4 billion for family housing. There is \$1.75 billion for BRAC implementation and cleanup for both 2005 and prior rounds. The conference agreement also provides necessary services for our service men and women and their families, not only enabling them to effectively do their jobs, but also providing an improved quality of life in our military communities. This is important for many reasons. Of course, it is the right thing to do for our military. It is also

the smart thing to do with our tax dollars. In this time of war and frequent deployments, recruiting and retention, maintaining a ready and available workforce is very much on the minds of our military leaders. We often say, in this era of an All Volunteer Force: You recruit individuals, but you retain families. The quality-of-life improvements that make our military communities great places to live are crucial in the retention of military families. Within this conference report before you, we fund projects that will improve the lives of those families. We fund 11 family housing privatization projects, which will provide high-quality, market-standard housing for nearly 15,000 military families; 39 barracks projects that will get our single soldiers, sailors, airmen, and marines out of substandard living conditions, or, in some cases, off ships and into first-rate facilities; and schools, child development centers, and family support centers that will ensure our servicemembers' children and spouses are cared for, are included in this bill.

These improvements make it easier for troops to deploy, to focus on their day-to-day jobs, while giving them the peace of mind that comes with knowing their families and homes are taken care of, so they can give their attention to the job we are asking them to do—protecting America. The conference report provides the first piece to the most recent BRAC round. With the funds provided, it places priority on those funds which are critical to carrying out BRAC, while providing the necessary financial oversight of the resources provided.

For our veterans, we have fully funded the President's request for veterans benefits and health care. This has not been easy. House and Senate conferees have provided \$22.547 billion for medical services, which includes \$1.225 billion in emergency funding to fully meet the President's amended request for medical care for the country's veterans. This conference has strongly responded to the VA's recent budgetary shortfall by putting in place stringent financial reporting requirements in an effort to avoid the repeat of budget crises witnessed this summer in VA health care.

We have fully funded the request for medical facilities and infrastructure, totaling \$3.3 billion for fiscal year 2006. We have created three Centers of Excellence for mental health care, while at the same time fully funding health care for post traumatic stress disorder and other mental health care throughout the VA.

The conference has funded medical and prosthetic research at \$412 million, which is \$19 million more than the President's request. This is important because we know many of our troops coming home from Iraq and Afghanistan are suffering from loss of limbs, to a greater extent than we have seen before. So we want the research to make sure the prostheses they have make