I guess it has been a year and a half since I have been in Iraq, but certainly I think some real progress has been made. I felt as if there had been great progress when I was there. And as to the polls, in the preliminary election, ABC News shows that three-fourths of the Iraqi people express confidence in these elections. That is good and 70 percent approve of the new Iraqi constitution. In a country that has never done those kinds of things before, that is an excellent movement.

We are talking about positive things, which does not mean everything is great, of course. But it does mean we are moving forward, and there is an unmistakable shift from tyranny to democracy that is taking place.

As to the Iraqi forces, we all want them to shoulder a greater share of security efforts. In fact, that is happening. Now, I am also one who believes the system we have used, the military system, has to change as the situation changes. It was one kind of a military opportunity to be moving into Iraq to get rid of Saddam, and having troop movements, routine, normal military activities. Now the time has changed.

I was very impressed with the conversation I had with a police officer from Cheyenne, WY, who was there on a contract to help train police who said: That has all changed now. Instead of having platoons and companies moving around, we are having two or three insurgents over here, and we need more of a police kind of a system rather than a larger military system. I think certainly that is true.

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, probably more in the support—the supply support, the management from the background—as there is in being on the front lines as far as the military of the United States is concerned. I hope and think that movement and that change of role is indeed taking place. There are some 68,000 police who are there. So we are making some progress.

Again, some time ago, when I was there, I was real pleased. We would go down the road in a military vehicle and all the little kids would be waving their arms. We went to some schools. We went to some hospitals.

Now we are getting a report that 762 out of 834 schools are back in place. That is a good move—not complete, of course, not perfect. It is also reported that 12 out of 29 hospitals are back in place; 5 out of 12 major airports are functioning. So there is a great deal going on. It is reported that 144 out of 222 water treatment stations are functioning. There is still work to do, but, nevertheless, a substantial amount of work has been done.

So the fact is, of course, the road from tyranny to freedom is not an easy process. It is a process that we have not always experienced in the past. So as we see new challenges, then we have to face them in different ways. Having been in the military, I know sometimes it is difficult to sort of change the methods the military is accustomed and trained to do. But these are different sorts of challenges. I am very proud of the military in doing what they have done.

The al-Qaida terrorist leader has indicated that Iraq is a central battlefield for this war, certainly in terms of terrorism. And our people continue, of course, to do well in spite of the deadly insurgency. That is a tough thing. The insurgency is just people coming out of nowhere with bombs, roadside bombs in cars.

So I guess really what I am trying to say is there is good evidence that things are going well—not as well as you would like, obviously. 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 always 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 optimistic. 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.

So these are some of the things that are happening there. I think there is a surprising amount 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 increasing recognition that we are there until our job is finished; 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 certainly is a goal as well. And that, too, is happening.

So I guess the bottom line of what I have read here and what I am saying is that even though, for various reasons, it seems as if there is a great difference, I think you can see, as you hear about the difference in the parties here, and so on, that there is not that kind of a spread. Sure, there is room for discussion. But the fact is, the majority of people here want to stay until the job is done. The majority wants to turn it over to the Iraqis. The majority wants to remove our folks as soon as we can. And that includes the administration and the folks in opposition.

So that is a good sign that we are moving forward. And I hope certainly we can continue to do that, we can continue to support our goal there and, maybe more importantly, support our men and women who are there committed to carrying out this goal and to helping provide freedom around the world and to protect freedom in our country.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

THE PATRIOT ACT

Mr. SPECTER. Mr. President, I have sought recognition to describe the conference report on the PATRIOT Act, which was agreed to by conferees in the House of Representatives and the Senate last Thursday. This is the first time the Senate has been in session since that time, and the first opportunity for me to make a floor statement outlining the provisions of the conference report.

I begin by thanking the distinguished chairman of the House Judiciary Committee, Congressman JAMES SENSENBRENNER, for his cooperation and cordiality in working through many very difficult issues to come to agreement between the House and Senate conferees.

There has been general agreement that reauthorization of the PATRIOT Act is necessary as an important tool in the fight against terrorism. One item which the PATRIOT Act accomplished, which was enacted shortly after 3,000 Americans were killed and many wounded on 9/11, was elimination of the so-called wall, so that evidence gathered under the Foreign Intelligence Surveillance Act could be used in a criminal prosecution. Prior to the enactment of that provision, if there was evidence obtained under the Foreign Intelligence Surveillance Act, which has a slightly lesser standard than probable cause used for a criminal search warrant, it could not be used for a criminal case. There is no disagreement, to my knowledge, with the proposition that this provision is very important and ought to be retained.

Similarly, other provisions of the PATRIOT Act have been conceded to be important: the provisions on obtaining records, the provisions on wiretaps—although subject to some limitations, and I voted against that provision when 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 record provision; on the delayed notice provisions; and on roving wiretaps. There are limitations now imposed on national security letters, which have been in effect for decades. They were not created by the PATRIOT Act, but the reauthorization of the PATRIOT Act has provided a forum for reconsideration of the way national security letters are used and to provide safeguards for civil liberties.

The principal concern expressed publicly about the PATRIOT Act is the ability of law enforcement to obtain business records—it has been commonly referred to as the ''library records provision.'' There is great concern about obtaining somebody's library records by an agent unilaterally, who makes the certification that the records are sought for an investigation, and the agent on his or her own goes and obtains the records. The conference report is a vast improvement on existing law because the conference report imposes judicial review, not quite up to the standard of probable cause for a search and seizure warrant or probable cause for an arrest warrant but cause shown.

The statute provides that the court may issue an order for records only on ''a statement of facts showing that there are reasonable grounds to believe that the tangible things sought are relevant to an authorized investigation to protect against international terrorism.''

Having judicial intervention between the assertions of the law enforcement officer and the invasion of privacy to get these records is the common law standard; that is, the American way of protecting civil liberties. So the impartial magistrate is interposed between the police and law enforcement official and the citizen.

The Senate bill provided that relevance would be established only on a showing one of three things:

No. 1, that the records pertain to ''a foreign power or an agent of a foreign power; two, the activities of a suspected agent of a foreign power who is the subject of an authorized investigation; or three, an individual in contact with or known to a suspected agent of a foreign power.''

The conference report makes an important change to the standard from the Senate bill. This change was made after a closed-door briefing with the Department of Justice was able to show strong reasons to allow the judge to authorize obtaining records where one of those three conditions had not been met, where there was a terrorism investigation underway, and those records were crucial to moving ahead with that terrorism investigation.

I believe, while it would be preferable to have the Senate version, that this provision is reasonable and realistic and is certainly not a substantial basis, not really any basis at all, for rejecting the conference report.

The next most highly publicized concern has been on the so-called national security letter. I repeat, the national security letter was not created by the PATRIOT Act passed shortly after 9/11 but has been an investigative tool for decades. Under current law, there is no explicit right on the part of someone who has been served with a national security letter to do anything about it except to comply. The conclusion has been reached that the recipient may not make a disclosure of that national security letter.

The conference report is a vast improvement. I have used the word ''vast'' repeatedly because it makes a very extensive improvement by enabling the recipient to go to a lawyer. It explicitly says you can go to your lawyer and you can challenge the national security letter and you can go to court. You can have the national security letter quashed if it is unreasonable, oppressive, or otherwise contrary to law. When you go to court, you can get permission to tell the target of the national security letter about the national security letter, if the judge finds that doing so would not harm national security, interfere with an investigation or diplomatic relations, or risk death or bodily injury to another person.

The judicial review is somewhat limited in that there is a presumption that the certification by high-ranking officials of the Department of Justice or the FBI or the requesting agency will be conclusive on whether the disclosure will be harmful to national security or diplomatic relations.

What was not understood, really misunderstood, during the course of the deliberation in the conference, was that the Senate bill, which was widely heralded as being a remarkably good bill, agreed to by all 18 members of the Judiciary Committee—and it is very unusual to have the Judiciary Committee agree unanimously on anything, let alone on a matter of civil rights, but that was done. Then, when the bill was forwarded to the floor, it went on our so-called unanimous consent calendar, which means it was passed by unanimous consent without any floor debate. It is highly unusual and perhaps unprecedented on a bill of this magnitude to be on the unanimous consent calendar because people all thought it was fine. That requires the absence of an objection. Any one Senator can prevent it going on to the unanimous consent calendar. That means 100 Senators have to in effect have acquiesced.

The provision in the Senate bill was that ''in reviewing a nondisclosure requirement, a certification by the government that the disclosure may endanger the national security of the United States or interfere with diplomatic relations will be treated as conclusive unless the court finds that the certification was made in bad faith.''

As I said before, it was misunderstood and not noted by the conferees as to that provision in the Senate bill which drew only praise, not an objection. But there was an objection raised to a provision in the conference report which is more protective of civil liberties than that which was in the Senate report.

The conference report specifies ''if at the time of the petition, the Attorney General, the Deputy Attorney General, an Assistant Attorney General, or the Director of the Federal Bureau of Investigation, or in the case of a request by a department agency, or instrumentality of the Federal Government other than the Department of Justice, the head or deputy head of such department, agency, or instrumentality''—here comes the critical language—''certifies that disclosure may endanger the national security of the United States or interfere with diplomatic relations, such certification shall be treated as conclusive unless the court finds that the certification was made in bad faith.''

So the conference report is more protective of civil rights than was the Senate bill, which was so widely praised, because in the Senate bill you had to have a certification by the Government, which means any agent of the Government. But in the conference report, it was ratcheted up to require certification by these high-ranking officials, such as the Attorney General or the head of the FBI or the department heads or Assistant Attorneys General, all of whom are subject to Senate confirmation.

I think, had the misconception not prevailed about the presence of that provision in the Senate bill, our conference would have been a lot shorter, and I think it fair to say, not with absolute certainty but fair to say, it would have had more signatures on the conference report.

But in any event, the conference report gives much more by way of protection of civil liberties than is present under existing law.

The third issue which was taken up to enhance the protection of civil liberties is the delayed notice provision, or the so-called ''sneak and peek provision.'' This involves a situation where

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 the individual 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 on cause shown 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 under the 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 on wiretaps. When the PATRIOT 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 by 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, it was my expectation if we fulfilled your request for assistance on 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 not for 10 years, 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 that would 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 SENSENBRENNER 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—Senator CRAIG, Senator SUNUNU, Senator MURKOWSKI, Senator DURBIN, 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, was itself a compromise that resulted from intense negotiations by Senators from all sides of the partisan and ideological divides. Unfortunately, the conference committee draft retreats 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 terrorist activity while making reasonable changes to the original law to protect innocent people from unnecessary and intrusive government surveillance.

To support this bill, we would need 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 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.

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. 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 review of an 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. Violating an NSL 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 effective oversight.

The draft conference report does not sunset the NSL authority. In light of recent revelations about possible abuses of NSLs, the NSL provision should sunset in no more than four years so that Congress will have an opportunity to review the use of this power.

4. SNEAK AND PEEK WARRANTS

The draft conference report requires the government to notify the target of a ''sneak and peek'' search no earlier than 30 days after the search, rather than within seven days, as the Senate bill provides and as pre-Patriot Act judicial decisions required. 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.

For 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 SAFE Act to address those problems, while still maintaining important law enforcement powers needed to combat terrorism. We cannot support a conference report that would eliminate the modest protections for 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 changes are not 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.
RUSS FEINGOLD.
KEN SALAZAR.

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

Hon. LARRY E. CRAIG.
Hon. JOHN E. SUNUNU.
Hon. LISA MURKOWSKI.
Hon. RICHARD J. DURBIN.
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 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 in certain narrow circumstances to issue an order under Section 215 upon a showing of relevance, I respectfully disagree that the result is a provision more open to abuse. In fact, the additional protections we have obtained in the Conference Report make Section 215 unquestionably more protective of civil liberties and privacy rights than current law, and likely even more protective of those rights than the Senate bill.

First, it is important not to overstate the significance of the fact that the FISA court, in extraordinary circumstances only, will allow a 215 order upon a showing of relevance to a terrorism investigation. The relevance standard will apply only in extraordinary circumstances because the Conference Report channels all applications for Section 215 orders into the three categories delineated in the Senate bill. By providing a presumption of relevance when the government can demonstrate a connection to a suspected terrorist or spy, the bill ensures that requests falling outside the three categories will be the exception and not the rule. Indeed, the presumption ensures that law enforcement will face an uphill battle in any effort to obtain a 215 order that does not fall into one of the three categories and thereby provides an incentive for the FBI to use the tool only when it can show a connection to a suspected terrorist or spy. Some flexibility was necessary because the Justice Department was able to demonstrate, in a classified setting, that circumstances arise in which it is necessary to obtain an individual's records in an authorized investigation in which it is not possible to demonstrate that the individual is working on behalf of a foreign power or a known terrorist organization.

In addition, the Conference Report includes a number of safeguards against abuse of Section 215 that neither the Senate bill nor the House bill contained. First, the Conference Report would require a comprehensive audit by the Justice Department's famously independent Inspector General of law enforcement's use of Section 215. The Inspector General's reports will examine the use of Section 215 both before and after reauthorization of the PATRIOT Act. Second, the Conference Report would permit, for the first time, public reporting of the total number of 215 orders sought and granted. A third safeguard 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 American citizens or from maintaining records on citizens who are only incidental to the investigation.

Finally, it is important to point out that the conferees 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 express vesting of discretion in 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 most sensitive documents; (6) the requirement that 215 orders can compel the production only of those tangible things that could be obtained under a grand jury subpoena or other orders issued by federal courts; and (7) the inclusion of a four-year sunset provision to guarantee that Congress will revisit Section 215 at a later time.

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. The recipient of a Section 215 order is entitled to meaningful judicial review of the gag order.

After extensive discussion of this issue by the conferees, I was able to conclude that the statutory scheme that the Conference Report establishes would permit adequate judicial review of the nondisclosure requirement.

Primarily, this review occurs because an order under Section 215 cannot issue without advance approval by the FISA court. This review is not only important as a practical matter, in that it guarantees judicial scrutiny of the confidentiality provision in each 215 order; but it could well prove dispositive in any First Amendment challenge. In fact, one federal court that invalidated the nondisclosure requirement of an NSL on First Amendment grounds specifically singled out the absence of explicit judicial review in the present law as the principal reason the regime governing nondisclosure of orders under Section 215 was preferable. *Doe* v. *Ashcroft,* 334 F. Supp. 2d 471, 515 (S.D.N.Y. 2004) (''Furthermore, these provisions are not quite as severe as those contained in the NSL statutes because, with one narrow exception for certain FISA surveillance orders [that is not relevant here], they apply in contexts in which a court authorizes the investigative method in the first place.''); *cf Doe* v. *Gonzales,* 386 F. Supp. 2d 66, 80 (D. Conn. 2005) (criticizing the law governing NSLs on First Amendment grounds because it ''provides no judicial review of the NSL or the need for its non-disclosure provision'').

2. NATIONAL SECURITY LETTERS

The draft Conference Report does not provide meaningful judicial review of an 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.

As an initial matter, the ability to challenge the issuance of an NSL remains the same as that necessary for challenging a grand jury subpoena. A party challenging an NSL may be successful if it is shown that compliance with the NSL would be unreasonable, oppressive, or otherwise in violation of the law. The provision at issue relates only to the question of whether the recipient of the NSL may disclose that fact. In that situation, the deference a court must show to the government is not nearly as broad as stated. Specifically, the court is required to treat a government certification with deference only when the government asserts that removing the nondisclosure requirement would endanger the national security of the United States or interfere with diplomatic relations. Even so, the court is able to invalidate the nondisclosure requirement in the event the government acts in ''bad faith.'' In all other circumstances, the Conference Report makes no provision for any special deference to the government.

Furthermore, it is important to note that substantively identical language was included in 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 Government that the disclosure may endanger the national security of the United States or interfere with diplomatic relations shall be treated as conclusive unless the court finds that the certification was made in bad faith.''); see also H.R. 3199 §16.

The conference adopted an important 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 conclusive presumption. This is in contrast to the House bill, which allowed this certification to be made by the Special Agent in Charge of any one of the FBI's 56 field offices, and the Senate bill, which provided for certification by ''the Government,'' generally. In light of this additional safeguard over and above what was in either bill, as well as additional public reporting and Inspector General reports concerning NSLs, my hope is that this provision will not prevent you from supporting the Conference Report.

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. Violating an NSL gag order 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 one-year misdemeanor for knowing and 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 injunction against disclosure; it is only when the government certifies that disclosure may result in a danger to national security or to the physical safety of an individual, or in interference with an investigation or diplomatic relations, that confidentiality is even on the table. Second, the Conference Report explicitly provides that individuals can disclose the existence of the NSL both to those to whom such disclosure is necessary to comply with the request and, critically, to an attorney ''to obtain legal advice or legal assistance with respect to the request.'' Thus, an individual who believes her rights have been violated will be able to consult counsel to explore her options for redressing any grievance. Third, 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 reduced to four years.

In addition, Section 106A of the Conference Report, which does not have an analogue in either bill and was generated during the conference, provides that the Inspector General of the Department of Justice will conduct two comprehensive audits of the use of Section 215. Together with the sunsets, these provisions go farther than even the Senate bill did in ensuring that the Justice Department is fully accountable for its use of Section 215. The Inspector General is known, justifiably, for his thorough, independent-minded, and hard-hitting reports, so there is every reason to think that these inquiries will be an effective check on the Justice Department. Moreover, the release of each report will be occasion for front-page news stories, Congressional briefings, and public hearings—all of which will generate fresh political will and opportunity to rectify any problematic aspects of Section 215.

The draft Conference Report does not sunset the NSL authority. In light of recent revelations about possible abuses of NSLs, the NSL provision should sunset in no more than four years so that Congress will have an opportunity to review the use of this power.

NSLs have been used since at least the 1970s. No evidence exists suggesting their use has ever been abused, nor until now has anyone requested NSLs be subject to a sunset. Neither the House nor the unanimously passed Senate bill contained a sunset provision for NSLs. Nevertheless, the Conference Report contains new accountability provisions and creates additional opportunities for oversight. As with Section 215, the Conference Report requires audits by the Inspector General of law enforcement's use of NSLs. Section 119 of the Conference Report, which was generated during the conference, requires two such comprehensive audits. These audits should have much the same effect as a sunset.

Despite recent press reports, there is no evidence that NSLs have been abused. Much of the relevant information about NSLs is classified, so any individual news story will understandably omit critical information that is available to lawmakers. Thus, I strongly encourage you or your staff to contact the Intelligence Committee if you are interested in the complete picture concerning the use of NSLs. I think you will be satisfied, as I was, that the media coverage vastly overstates any such ''problems.''

4. SNEAK AND PEEK WARRANTS

The draft Conference Report requires the government to notify the target of a ''sneak and peek'' search no earlier than 30 days after the search, rather than within seven days, as the Senate bill provides and as pre-Patriot Act judicial decisions required. 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.

As you know, I was able to include in the Senate bill a 7-day limit on the period in which notice can be delayed in delayed-notice search warrants. The House bill, of course, adopted a limit of 180 days, and the House was insistent on not going any lower than 90 days—a period that, it was argued, is consistent with the analogous limit for Title III wiretaps. Moreover, while it is true that the Second Circuit indicated that 7 days was a presumptively reasonable period of delay, the Fourth Circuit countenanced an initial delay of 45 days. Still, my twin objectives in conference were to retain a shortened delay period and to mitigate the significant problem of courts permitting open-ended notification delays.

The Conference Report provides that the maximum period for which notice can initially be delayed is 30 days. Although this period is a few weeks longer than the 7-day time limit from the Senate bill, it is considerably shorter than the 180 days permitted in the House bill and is a significant improvement over the original PATRIOT Act, which included no limits on the period of delay other than what was ''reasonable.'' We were also able to eliminate the possibility of open-ended delays by mandating that notification occur on a date certain. In addition, the Conference Report preserves from the Senate bill both public reporting provisions and the requirement that extensions of the delay period be granted only upon an updated showing of the need for further delay.

Finally, it is important to be mindful of the very limited scope of this issue. Even in the national emergency following September 11, 2001, delayed-notice searches were exceedingly rare. Indeed, the Justice Department has estimated that delayed-notice warrants constituted less than one-fifth of one percent of all search warrants executed by Department components between enactment of the PATRIOT Act and January 31, 2005.

I appreciate the opportunity to explain my views regarding the Conference Report, and I remain grateful for your insights on these important issues. The Conference Report goes far in achieving the aims of the original Senate bill; namely, it permits law enforcement the necessary tools to protect the country against terrorist acts while at the same time safeguarding the civil liberties we all cherish. In particular, what sets the Conference Report apart from even the Senate bill is its detailed reporting requirements to Congress and the public and its interposition of judicial review on some of the more controversial provisions. Requiring both detailed reporting and Inspector General audits will enable the Congress, as well as the public, to guard vigilantly against any possible governmental incursions upon civil liberties.

Very truly yours,

ARLEN SPECTER.

Mr. SPECTER. I ask unanimous consent that a copy of a ''Dear Colleague'' letter circulated generally to all the Senators dated December 9, 2005, be printed in the RECORD.

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

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, December 9, 2005.

DEAR COLLEAGUE: Upon the Senate's return during the week of December 12th, we will be voting on the conference report reauthorizing the USA PATRIOT Act. I write to seek your support and to explain how the provisions of the conference report retain the most important civil liberties and privacy protections from the bill that passed the Senate and include additional safeguards that emerged from the negotiations between the House and Senate conferees. The conference report retains the tools essential to law enforcement in fighting international terrorism while significantly expanding protections for civil liberties from the Act currently in force.

Although the conference report contains many valuable provisions, such as important protections for the nation's seaports and mass transportation systems, as well as new penalties to combat the growing problem with methamphetamine abuse, I would like to focus on several of the more contentious provisions of the PATRIOT Act itself.

SECTION 215: BUSINESS RECORDS

The most controversial provision of the PATRIOT Act has been Section 215, the so-called ''library records'' provision. 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 215 orders sought and granted. A third safeguard is the conference report's provision that Section 215 orders may not be used merely for threat assessments. This requirement ensures that Section 215 will be used only during those authorized investigations that have progressed somewhat beyond the initial stages. A fourth new safeguard is that every order under Section 215 will require minimization procedures that curtail the retention 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 right of recipients to consult legal counsel and seek judicial review of 215 orders; (4) the requirement of approval by the

FBI Director, Deputy Director, or Executive Assistant Director for National Security before the government can seek library records, medical records, or other sensitive documents; (5) the enhanced reporting to Congress on the use of Section 215, including specific information concerning requests for the most sensitive documents; (6) the requirement that 215 orders can compel the production only of those tangible things that could be obtained under a grand jury subpoena or other orders issued by federal courts; and (7) the inclusion of a four-year sunset provision to guarantee that Congress will revisit Section 215 at a later time.

The major difference between the Senate bill and the conference report with respect to Section 215 is that the conference report authorizes the FISA court in certain narrow circumstances to issue a Section 215 order upon a showing of relevance to an already authorized terrorism investigation without a demonstration that the person's records being requested is a known terrorist or acting on behalf of a foreign power. The relevance standard will apply only in extraordinary circumstances because the conference report is set up so as to channel all applications for orders under Section 215 into the three categories the Senate established in its reauthorization bill. By establishing three circumstances to demonstrate relevance when the government shows a connection to a suspected terrorist or spy, the bill ensures that requests falling outside the three categories will be the exception and not the rule. Thus, the Senate bill's three-part test remains a substantial safeguard in the conference report.

Law enforcement will face an uphill battle in any effort to obtain a 215 order that does not fall into one of the three categories and thereby provides an incentive for the FBI to use the tool only when it can show a connection to a suspected terrorist or spy. This provision was deemed necessary because the Department of Justice was able, in a classified setting, to demonstrate that circumstances may exist in which an individual may not be known to a foreign power or be a recognized terrorist but may nevertheless be crucial to an authorized terrorism investigation.

NATIONAL SECURITY LETTERS

The conference report also makes important changes to the laws governing National Security Letters (NSLs), which the FBI has used for several decades to request communications records and financial information from third parties in intelligence and terrorism cases. First and foremost, the conference report makes explicit the right of NSL recipients to ask a court to set aside the requirement to turn over information as well as the requirement to keep the request for information confidential. This is in stark contrast to current law, which affords no such explicit right. Second, in a protection analogous to one provided for Section 215, the conference report requires the Justice Department's Inspector General to audit the FBI's use of NSLs. Finally, the conference report significantly enhances reporting to Congress and requires an annual public report on the FBI's use of NSLs. These reporting requirements enable both Congress, and the public, to ensure that NSLs are not being abused.

SECTION 213: DELAYED-NOTICE WARRANTS

The conference report has retained the important protections from the Senate bill's amendments to Section 213 of the PATRIOT Act, which authorizes warrants allowing the government to wait a number of days after the search before notifying the target. The conference report requires that a target be notified within 30 days of the search, unless the facts of the case justify a later date. Although this period is longer than the 7-day time limit from the Senate bill, it is considerably shorter than the 180 days permitted in the House bill and is a significant improvement over the original PATRIOT Act, which imposes no limits on the period of delay beyond what is ''reasonable.'' And, like the Senate bill, the conference report permits extensions of the delay period only upon an updated showing of the need for further delay. As in the Senate bill, these extensions are limited to 90 days, unless the facts justify a longer delay. Finally, and again like the Senate bill, the conference report requires public reporting of all delayed notice warrants.

SECTION 206: MULTIPOINT WIRETAP ORDERS

Many, including myself, have discussed the need for changes to Section 206 of the PATRIOT Act, which authorizes multipoint or ''roving'' wiretap orders. I think the conference report successfully meets that need. The ability of the Justice Department to obtain multipoint wiretaps is in part a result of changes in communications technology that have made the use of cell phones ubiquitous. Terrorists have taken advantage of those changes to cover their tracks by using multiple phones.

Borrowing elements from both the House and Senate bills, the conference report limits the use of roving wiretaps to those cases in which the FBI includes in its application a ''specific'' description of the target and ''specific facts in the application'' that show the target's actions may thwart surveillance efforts. Further, the conference report adopts the Senate bill's requirement that the FBI notify the court within 10 days of moving its surveillance of a target from one telephone number to another. As an additional safeguard, the conference report requires that the FBI report periodically to Congress on its use of the roving wiretap authority. Finally, like the Senate bill, the conference report includes a four-year sunset for Section 206 so that Congress will revisit this provision in the near future. I believe these important modifications will go far in preventing abuse of this provision.

Much of the criticism has really involved complaints about the current PATRIOT Act without understanding the improvements in the conference report. Numerous hearings have determined that the PATRIOT Act has not been subject to abuse. But in order to promote public confidence, the conference report includes significant changes that will enhance oversight by the Congress, the judiciary and the public at large. The conference report represents a balanced compromise designed to maintain our ability to investigate—and hopefully preempt—terrorist attacks, while ensuring that the rights enshrined in our Constitution are not violated.

Very truly yours,

ARLEN SPECTER.

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 talk of a filibuster. Whatever Senators choose to exercise whatever rights they have, we will see, but I thought it would be useful in talking to a number of colleagues today, the request was made to see something in the CONGRESSIONAL RECORD which goes into some detail in hitting the hot spots, but I add to my colleagues who may be listening or staffers of my colleagues who may be listening or who may read this in the CONGRESSIONAL RECORD which will be in print today, my staff and I are ready, willing, and able to elaborate further on the substance of the conference report. This report has been the subject of negotiations between the House and Senate for weeks and has consumed all of last week.

I thank the staffs on both the House and the Senate for extraordinarily diligent work, working around the clock. This was a full-time venture for me, personally, and other Members for the past many days. We have moved ahead because this bill expires on December 31. For those who want to reargue it and relitigate it and reconsider it, it will not get any better. If we go back to conference, were that course to be followed, there are a lot of limitations in the wings that could be added. With only that one provision about the conclusive presumption having been an issue, and it having been in the Senate bill which, again I repeat, we were misinformed about and the vast improvements on the issues we have mentioned, it is a bill that ought to be accepted so we can move on.

We have a very heavy schedule in the Judiciary Committee. When we return in early January before the Senate goes into session, we have the confirmation hearings of Judge Alito for the Supreme Court scheduled on the 9th of January. We then have scheduled as the first item of legislative business asbestos reform when we go back into session on the 23rd. The first item of legislative business will be available on January 24. Then we have the issue of immigration reform, which is very high on the agenda. We have backing up the matter of reporters' privilege or reporters' shield and a long list of items of other confirmation proceedings to take up the time of the Judiciary Committee.

I invite my colleagues' careful consideration, and I repeat the availability of staff and myself personally to answer any questions or make any elaborations.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

HUMAN RIGHTS DAY

Mr. COLEMAN. Mr. President, in recognition of Human Rights Day on December 10, I rise to pay tribute to some of the bravest human rights advocates in this hemisphere Cubans who have dared to raise their voices to protest a regime they rightfully see as antidemocratic and harshly repressive.

Cuba is the only country in the Western Hemisphere that has not held democratic elections in recent decades. Fidel Castro has served as dictator for