

the flow of oil from the refuge is going to start to decline as the reserves are depleted.

Also, this is a phony argument that we need to somehow be doing this now. It has nothing to do with the immediate security of our country. The fact is, 95 percent of the Alaska oil shelf is open for drilling/leasing today—95 percent of it. There are vast areas of that shelf that are open that are still not leased, still not producing. In addition, we have the largest oilfield in the world that is unexploited, which is in the Gulf of Mexico, the deepwater drilling of the Gulf of Mexico. Those leases have already been granted. They have already been environmentally permitted, but they are not being drilled. Why? Because the price differential thus far has not brought people to do that.

If we want to do something for immediate American help, provide a subsidy, provide some assistance, do something that provides an incentive so that drilling takes place now. That would have far more effect than what is happening in this Alaska argument.

The bottom line: I said it again and again everywhere I went over the course of the last 2 years during the Presidential race. Every time I had a chance, I talked about how we only have 3 percent of the world's oil reserves. That is all we have in America—3 percent. The Saudis have 46 percent. The Middle East has 65 percent. There is absolutely nothing the United States of America can do to drill our way out of our predicament—our dependence on oil. We have to invent our way out of it, and inventing our way out of it means moving to alternative fuels, means pushing the curve of discovery, doing what America has always done in terms of creation of new jobs and new technologies. That is why it is a phony argument. That is the bottom line of why we don't have to be here pushing to do this on a defense bill which is important to our troops and to our country.

My hope is that in the next hours perhaps we can get a measure of reasonableness. But the bottom line still remains the same. There are people who believe deeply in drilling. I understand that. I respect that, and they can talk about that belief. That it not what this vote is about.

What this vote is about, in the end, is whether this effort to open the Arctic National Wildlife Refuge ought to be allowed to circumvent the rules of the Senate and whether this is the message we want to send about the rules and how the Senate works; that nothing means anything around here as long as you can change it whenever you want.

We have to remember that what goes around comes around. I don't think it is good for the Senate. I don't think this is good for this institution. I don't think it is good for a majority or a minority, one of which may be the other any day in the future, and regret this kind of this kind of effort.

When we stand up for the rules, we stand up for history, we stand up for the Constitution, and we stand up for what this Constitution gives to us as an individual responsibility—each and every one of us. And when we break the rules, we send a damaging, dangerous message to the rest of our country that looks to this place—ostensibly used to look here anyway—for leadership.

When you read the polls today about where the Congress is and the esteem of the American people, you ought to think twice about whether this is the way to proceed.

I yield the floor.

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

PATRIOT ACT

Mr. SESSIONS. Mr. President, I want to share some thoughts about the PATRIOT Act and the situation we find ourselves in now with this legislation that we passed 4 years ago that expired December 31. This legislation that passed the Senate by a vote of 80-something, with one "no" vote, all the rest of the Senate voted for it. It was made law, and we agreed to reauthorize it after 4 years. We have been involved in that process.

I wish to say this has not been a rushed-up deal. We have not gone into this without watching over it.

We have had—I am sure some of the Members may have forgotten—a host of committee hearings dealing with the PATRIOT Act. In fact, the numbers I have is that the Senate Judiciary Committee had 13 oversight hearings over the PATRIOT Act. The House Judiciary Committee had 12 oversight hearings this year alone dealing with the PATRIOT Act and our law enforcement against terrorism.

For example, I have a list of the hearings we held. On November 28, 2001, not long after the act passed, there was a hearing entitled, "Department of Justice Oversight: Preserving Our Freedom While Defending Against Terrorism," witness Michael Chertoff, then-Assistant Attorney General, Department of Justice, Chief of the Criminal Division. He is now the Department of Homeland Security Secretary.

Also on that panel were William Barr, former Attorney General of the United States; Philip Heymann, James Barr Ames, Professor of Law at Harvard Law School; Griffin Bell, senior partner at King and Spalding, a former Attorney General of the United States under President Jimmy Carter; Scott Silliman, executive director of the Center of Law, Ethics and National Security at Duke University School of Law; Kate Martin, Director of the Center for National Security Studies; Neal Katyal, visiting professor, and Yale Law School professor of law at Georgetown University.

Also, in December of 2001, another hearing: "Department of Justice Oversight, Preserving Our Freedom While

Defending Against Terrorism." The primary witness was Attorney General John Ashcroft.

Oversight Hearings on Counterterrorism, June of the next year, witness list: Honorable Robert S. Mueller, III, Director of the Federal Bureau of Investigation; Honorable Glenn A. Fine, inspector general for the U.S. Department of Justice; Special Agent Colleen Crowley, chief division counsel for the FBI.

You remember she is the one who complained they did not listen to the evidence she had. And in fact, she made a lot of complaints. But if you boil it down to the bottom, the wall that had been put up, some of the rules and regulations and bureaucratic situations created by existing law at the time of 9/11, made it difficult for information to be shared. That has been fixed, in large part, by the PATRIOT Act and other acts that were passed.

Another one on oversight: Department of Justice with the Attorney General himself; then another one in September of that year, "USA PATRIOT Act In Practice: Shedding Light on the FISA Process."

Foreign Intelligence Surveillance Act, "Court and Process," had a hearing on all of that so your people understand it.

The Honorable David Kris, associate counsel, Department of Justice; Kenneth Bass, senior counsel with Sterne Kessler; William Banks, professor of law at Syracuse; Morton Halperin, director of the Open Society Institute, a true civil libertarian, he had his day to be heard.

"Tools Against Terror" was another hearing, "How the Administration is Implementing the New Laws to Protect our Homeland"—oversight on how these laws are being carried out; Glenn Fine, the inspector general, testified; Scott Hastings, associate commissioner of the Office of Information Resources Management; Alice Fisher, Deputy Assistant Attorney General; Dennis Lormel, Chief of the Financial Crimes Section.

Another one: "War Against Terror: Working Together to Protect America," Attorney General John Ashcroft; Secretary of Homeland Security Tom Ridge; Honorable Robert Mueller, Director of the FBI.

We had them there to answer how we are working better with these new laws to protect America.

Another one, oversight hearing: "Law Enforcement and Terrorism," Honorable Robert Mueller, Director of the FBI; Honorable Asa Hutchinson, Undersecretary for Border and Transportation Security.

Senator HATCH had a hearing in Utah with about 10 witnesses dealing with all of the issues related to homeland security.

Another one: "FBI Oversight, Terrorism and Other Topics"; "DOJ Oversight: Terrorism and Other Topics"; Department of Homeland Security, "Oversight, Terrorism and Other Topics."

The top people in Department of Justice—and that is in the Senate, and that does not count the Intelligence Committee that has had hearings, and it does not count the 12 or 13 or more hearings which the House Judiciary Committee has had.

First, I want to say that we spent a great deal of time 34 years ago in drafting the first PATRIOT Act. How did it pass with only one “no” vote if it was an extreme act? It passed with such an overwhelming vote because we made a commitment from the beginning that we would not undermine any of the great civil liberties that we as Americans have come to know and respect and cherish.

I remember asking witnesses. Somebody one time thought it was humorous. But I asked these witnesses: Is there anything in this PATRIOT Act that any court is going to declare to be unconstitutional? Every one of them said “no.”

Why did they say that? Because the techniques that we allowed terrorism investigators to utilize have already been approved and were being utilized in other aspects of law enforcement already, but they weren't available in an effective way for these investigators.

If there was something that was expanded in any way, it was well within the principles of the law as had already been established by the Supreme Court of the United States. For example the roving wiretap—you could always get a wiretap on a specific phone of a person, and you have to have a big affidavit. It has to be monitored, and the judge has to approve it to be satisfied. You approved it in advance of that wiretap being effective, that you had probable cause to believe that it was a justified act. Those facts are reviewable. If the judge was wrong, all the evidence that was gained pursuant to that would be dismissed, would be fruit of the poisonous tree and not be admitted in a court of law.

We simply said: Wait a minute, we are seeing more and more terrorists who travel around, use one cell phone and then another cell phone, move from apartment to apartment. Why not allow the courts to have an intercept of communications based on the phones that person may use if there is sufficient evidence to show that person is connected to terrorism and it is relevant to a terrorism investigation and it meets all the standard burdens of proof that have always been used in intercepting communications?

I was a U.S. attorney for 12 years. In that 12 years, I think we did one wiretap. These are not done routinely. In a big international terrorism security case, a wiretap can be incredibly valuable. It is one thing to have a wiretap on a Mafia gang or a drug gang; it is another thing to need to know a terrorist group may be plotting to kill thousands or tens of thousands of American people. If these intercepts are lawful for a drug gang, for a group of white-collar criminals, for a Mafia

group, they sure ought to be lawful for surveillance on terrorists.

We made that change and set forth all the standards, and we went through the legislation. We worked on the exact wording, word by word by word, and the bill we passed in this Senate unanimously came out of our Senate Judiciary Committee 18 to 0 a few months ago to reauthorize it. It said the order must describe a specific target with particularity so that there could not be any confusion about which person for whom the intercept is permissible.

The House bill had language they considered carefully. They came out with this language: “based on specific facts provided in the applications.” Then it goes to conference. We go over the House bill and the Senate bill and try to hammer out on agreement. Many of the provisions were complementary; they were approved in both bills. Where the provisions were in conflict, the Senate language was adopted.

With regard to the roving wiretap multipoint wiretap provision, section 206 of the original PATRIOT Act, basically the Senate version prevailed. I will talk about that for a few minutes because we have Members of the Senate on the Senate Judiciary Committee who voted for the bill when it passed unanimously a few months ago. We have Members of the Senate objecting today who were part of the majority of the unanimous Senate that approved it who are contending there were big changes made in conference. These changes are why they are now opposing a bill that just a few days ago they were supporting.

They should listen to the chairman of the Judiciary Committee, Senator SPECTER. Senator SPECTER was part and parcel of all negotiations. Members contended to get their own version of things. Frankly, some Members thought the language was not clear enough, and there were some difficulties for law enforcement we would like to have seen closed because it could have led to jeopardizing national safety. We held out and held out, but at the end, basically we gave in. As Senator SPECTER said, the bill that came out of conference was 80 percent the Senate bill. The Senate prevailed time and again even though on some occasions I thought the House provisions were better. We came in and moved a bill we thought we would have bipartisan support for.

For example, there was a question about sunsets, what would be made permanent in the bill and what would have to come up for reauthorization or would sunset. The Senate bill eliminated all but two of the PATRIOT Act sunsets—the roving wiretap and the business records sunset. They were extended for 4 years. We said we will go 4 more years with these two provisions. We extended the lone wolf provision for the same period in the Senate. We passed it; 4 more years for those three provisions.

The House did not sunset the lone wolf provision but did sunset section 206 and 215, but for 10 years. They said they would be extended for 10 years. So we go to conference and we debate this issue. I thought the original agreement was we would split the difference, as is commonly done, and we would do it for 7 years. In fact, I signed the conference report at that point. I believe that is when I signed it. But Senator LEAHY and other Members of the conference did not like it and held out and held out.

We talked to Senator SPECTER and asked: Why are we coming back in 4 years again? We just had a 4-year bill.

Senator SPECTER said: Look, it is important to the Members. We want some bipartisan support, Senator SESSIONS. Would you support us on it in 3 to 4 years?

I said: All right, we will take the 4 years, the exact Senate bill language.

Senator KYL felt strongly about this also as we discussed it.

So we send that, thinking we made people happier and they would be enthusiastic supporters of a bipartisan piece of legislation important to protect the safety of the people of the United States of America.

Now, here is another example of the flap, this spasm we are having that amounts to little or nothing: the delayed notice search warrant. As a person who has been involved in supervising investigations relating to large-scale international drug smuggling groups—not terrorist groups but those kinds of conspiracies—I have been made familiar with the difficulties of law enforcement, the burdens on law enforcement, the need to do things right. Our law enforcement agencies do things right according to the instructions they are given.

There comes a time when it is important in an investigation to execute a warrant, but at the time you execute it, it is not an appropriate time to arrest the people involved. That happened a lot. Maybe it is less important in a drug case than in a terrorism case where people may have poisonous gas or biological weapons hidden in their apartment, but in a drug case this is what you come down to. The law allowed and has always allowed, to my knowledge, a warrant with specific stated facts. It could be approved, but that warrant has to be based upon the same factual proof we have always had, but you would want to ask the court to allow a search to be conducted of a house. Instead of immediately telling the person whose house or business or automobile is being searched that you searched it, you delay notifying them. You still have protected them from an unlawful search because you have gotten a lawful court order based on facts proven to a Federal judge. In the case of terrorism and these cases I dealt with, proof had to be submitted. And then you could ask the court to allow you to delay notifying the person who is searched for a period of time.

This is important because otherwise you tip off the whole group, and they will scatter like a covey of quail. They will be gone. If you do not have everybody there at the time you do that search, then they have the ability to notify one another and scam, and the whole thing can go down in a hurry. So dealing with that complex issue is an important thing.

So with regard to the delayed notice warrants, I just want to say to my colleagues and friends, I cannot tell you how important this is to our investigators, who may be out there this very moment surveilling some sleeper cells of terrorist groups and who need to obtain information that could be critically important to identifying a major organization.

Maybe the individual they have information about, and for which they have probable cause sufficient to conduct a search warrant of their house, is the only name they really have, but maybe they have good evidence this individual is talking to a number of other persons, and that they may even be planning to bring a chemical or biological weapon or some other explosive device into the country or into that house, and they want to search that house, and they have proof sufficient to allow that to occur by presenting it to a Federal judge to get approval. But they do not need to tell them right then because you are trying to penetrate the organization and get all of them, not just one or two. Maybe there are 20 or 30, and maybe you only know of 1 or 2 of them, so you conduct these warrants, and you delay notification.

So I want to point out that what the big difference fundamentally was is this: The Senate bill said the investigators who go out and conduct that warrant have to report back to the judge—in all of our legislation, they have to report back to the judge—to see what they did and how they did it and make an official report; they just don't tell the person whose house is searched. So the Senate bill said they should have an initial period of delay of 7 days. The House bill said they would have an initial period of delay of up to 180 days.

So we went to conference, and the House said: Well, we think 180 is appropriate under these circumstances. These are groups, terrorist groups, whatever. It might be really necessary to have more time. We were at 7. And then you could come back and ask the judge to extend it under either one of the bills. So we hammered around and worked around, and we agreed on 30 days—much closer to the Senate bill's version, our version, than the House bill's version.

So how is this some big deal? So we have Senators down here saying: Well, I think it is all right to have a delayed warrant for 7 days. I just don't want to have it for 30 days. So I think we need to get our act together here and try to reach some agreements and get this bill passed.

But I will say this: For those of us who believe strongly this act is impor-

tant, it should not just be seen that we are now going to come back and water down this bill and erode the provisions that are in it and not have delayed warrants, not have section 215 authority, to eliminate national security letters that have been part of the law for 25 years. We cannot take these things out.

Mr. President, I urge my colleagues to study this legislation carefully. Talk to the Department of Justice attorneys, call the FBI, if you need to. They will go over it step by step, word by word, line by line. As you go through that and consider the history of law enforcement, what is allowed to be done now, how this all occurs, you are going to feel so much better about it and not just react to this unfair choice that is presented: civil liberties or protection. We gave greater protection while protecting civil liberties.

Mr. SESSIONS. Mr. President, we just go back to trying to comprehend the enormity of what has happened as Senator REID, the Democratic leader in the Senate, had a big press conference to declare victory. He said:

We killed the PATRIOT Act.

It is not something I think is worthy of a leader of any great party in the Senate. It is the equivalent of the Democratic leader saying we have no way to win in Iraq. These are the kind of statements that are really contrary to what this Nation needs to do right now.

The PATRIOT Act is an act that we passed with one dissenting vote 4 years ago and that we passed out of this Senate unanimously and out of the Judiciary Committee unanimously just a few weeks ago and which has now come back as only a modestly modified conference report. It ought to be unanimously affirmed again.

We have ended up with a filibuster led by the Democratic leader. I am disappointed at that. I can't comprehend why it occurred and why this would happen. There were a lot of contests, let me say, in the conference committee; a lot of hard work over every single word in the bill. But our version, the one we supported in a bipartisan way, was overwhelmingly the version that was adopted. We brought it back with everyone thinking we would have a great opportunity to pass it. In fact, some of us thought we went too far and that we had weakened law enforcement in ways that were not necessary.

We tried to resist, but in the end, at the request of Senator SPECTER, in a bipartisan effort to move the bill quickly through the Senate, we dropped our objections and went along with that provision.

Lo and behold, we end up with another obstructing tactic to block one of the most important pieces of legislation we have passed in a long time. At many of the hearings I mentioned before, the witnesses testified unequivocally that this act had made America a safer place.

I mentioned earlier the sunsets. We have differences of agreement on the

sunsets. The Senate version was totally adopted on the roving wiretaps. By far, the Senate version was adopted on the delayed notice search warrants. I have explained how important and critical they are. Just ask an FBI agent or talk to a Federal prosecutor who has worked on one of these cases how critically important it can be to have this delayed notification. The Senate version of the bill was 7 days, the House version 180 days, and we agreed on 30. One would have thought that would be the case.

With regard to the business records, the Senate bill had a very troubling part to it. It had a three-part relevancy test. This test required the FBI, before they could obtain these records—and these are not records in the personal dominion of a potential defendant; these are records they don't control but are in the control of a bank or telephone company. They are not the words one says in a telephone message, but the telephone toll records. These are part of the records and have always been subject to a subpoena by law enforcement. Any county attorney in America can subpoena these records.

Because we wanted to go an extra mile and deal with the question of immediate notification of the person whose records are being sought, we enhanced the requirements. So instead of issuing a subpoena, such as an IRS agent, without going to a U.S. attorney or without going to any court—an IRS agent can issue a subpoena for your income tax records to see if you paid your taxes. A DEA agent can get your bank records to determine whether a person made money selling dope. For white collar crime, Customs agents, there are about 200 or 300 provisions that allow for these kinds of records to be obtained by administrative subpoena. But we don't have that under section 215. They have to get a prior approval, and the agent has to certify it is related to a national security investigation. Only then are they able to get library records or your bookstore records.

I don't know why they think that is just so big. Pardon me if I am amused a bit. A county attorney in Illinois or Idaho can issue a subpoena right now to the library for somebody's records. What is this deal? But the association raised a ruckus, so we gave them all kinds of enhanced protections under this bill.

Again, the conference report went further than the Senate bill in many areas in the direction of civil liberties. We did have private briefings, secret briefings from Federal investigative agencies, and we learned why there were defects in the three-part relevancy test.

By the way, the average district attorney in America and, I think, the Federal attorneys, when they issue subpoenas for records, it only has to be relevant to an investigation. For a U.S. attorney, it has to be relevant to a Federal investigation. But, oh, here we

go much further. You have to have a three-part test to what relevancy is in addition to certifying it is important to national security.

So we dealt with that problem. I thought we had reached an agreement in language that did not leave serious gaps in the need for records and ability to obtain records that law enforcement was concerned with. We were concerned about that, and we tried to change it, fix it. I thought we reached an agreement on it. I thought we went too far, but I agreed to sign it because we needed to do this bill. That is why I agreed to sign the conference report.

Civil liberties that were not passed by the Senate or the House were added to the conference report at the request of Senate conferees, mostly Democratic conferees. So we added some items in addition.

Under the report, the Attorney General must adopt minimization procedures within 180 days of enactment of the legislation; that is, he must create procedures that minimize any likelihood that civil liberties could be adversely affected. And he must submit an annual report to Congress which enumerates the total number of applications made under the act, the number granted, the number modified, the number denied so we can have oversight over this issue.

Who is overseeing the county attorney? Who is overseeing the U.S. attorney who may be investigating a Member of Congress or the Senate or a Governor for tax fraud or something such as that? They are issuing subpoenas every day.

This is a very responsible, fully debated, intensely discussed piece of legislation. It is important to the safety of our country. It is important that we pass it and extend this act and reauthorize it. As of January 1, the wall will go back up that would deny the right of the CIA to share foreign intelligence with the FBI that may have domestic intelligence and, therefore, be able to put the pieces together in a puzzle that will identify a criminal gang that may be intent on destroying large parts of our country.

I believe that every effort has been made to assure that all the provisions of this act are consistent with established constitutional procedures. I believe not one line of it is going to be found to be unconstitutional. I believe it has all the protections and details that are necessary for good legislation.

There are some things in it that I think hamper law enforcement more than necessary that have little or no relevancy to real civil liberties issues, but they are in there because people were concerned. People are concerned so we dealt with the concerns, but we do not need to weaken this act any more. It is time for us to pass this legislation, to reauthorize this act and not allow it to expire as of the end of this year.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I thank my friend from Alabama. On many issues, we are together, and that is as it should be. On other issues, we, perhaps, do not agree. But I always—I always—hold his opinions in great respect, great respect. I admire him. And I admire the heritage he brings to us from that great State of Alabama. I thank him always for his service.

ABUSES OF POWER

Mr. BYRD. Mr. President, perhaps the greatest oration ever delivered was the Oration on the Crown, delivered by Demosthenes in the year 330 B.C. In that inimitable oration, it seems to me the question was posed: Who least serves the state? And the question was answered in that oration: He who does not speak his mind.

In this day, we should remember that. And I shall attempt to honor that credo.

Mr. President, Americans have been stunned at the recent news of the abuses of power by an overzealous President. It has become apparent that this administration has engaged in a consistent and unrelenting pattern of abuse against our country's law-abiding citizens and against our Constitution.

We have been stunned to hear reports about the Pentagon gathering information and creating databases to spy on ordinary Americans whose only sin is to choose to exercise their first amendment right to peaceably assemble. Those Americans who choose to question the administration's flawed policy in Iraq are labeled by this administration as "domestic terrorists." Shame!

We now know that the FBI's use of national security letters on American citizens has increased exponentially, requiring tens of thousands of individuals to turn over personal information and records.

These letters are issued without prior judicial review, and they provide no real means for an individual to challenge a permanent gag order. And through news reports, my fellow Americans, through news reports we have been shocked to learn of the CIA's practice of rendition and the so-called black sites, secret locations—hear that, secret locations—in foreign countries where abuse and interrogations have been exported to escape the reach of U.S. laws protecting against human rights abuses.

We know that our Vice President, DICK CHENEY, has asked for exemptions for the CIA from the language maintained in the McCain torture amendment banning cruel, inhumane, and degrading treatment. Thank God, Vice President CHENEY's pleas have been rejected by this Congress.

Now comes the stomach-churning revelation, through an Executive order, that President Bush has circumvented both the Congress and the court. Get that. Shame! Shame! He has usurped the third branch of Government, the

branch charged with protecting the civil liberties of our people, by directing the National Security Agency to intercept and eavesdrop on the phone conversations and e-mails of American citizens without a warrant, which is a clear violation of the fourth amendment. Get that. He has stiff-armed the people's branch of Government, this branch, the people's branch. He has rationalized the use of domestic civilian surveillance with a flimsy claim that he has such authority because we are at war.

The Executive order, which has been acknowledged by the President, is an end run around the Foreign Intelligence Surveillance Act, which makes it unlawful for any official to monitor the communications of an individual on American soil without the approval of the Foreign Intelligence Surveillance Court. What is the President thinking? What is the President thinking?

Congress has provided for the very situations which the President is blatantly exploiting. The Foreign Intelligence Surveillance Court, housed in the Department of Justice, reviews requests for warrants for domestic surveillance. The court can review these requests expeditiously and in times of great emergency. In extreme cases, where time is of the essence and national security is at stake, surveillance can be conducted before the warrant is even applied for. This secret court was established so that sensitive surveillance could be conducted and information could be gathered without compromising the security of the investigation. The purpose of the FISA Court is to balance the Government's role in fighting the war on terror with the fourth amendment rights afforded to each and every American. Yet the American public is given vague and empty assurances by the President that amount to little more than "trust me."

But we are a nation of laws and not of men. Where is the source of that authority the President claims? I defy the administration to show for the record where in the Foreign Intelligence Surveillance Act or where in the United States Constitution they are allowed to steal into the lives of innocent American citizens and spy.

When asked recently what the source of that authority was, Secretary of State Condoleezza Rice had no answer. Secretary Rice seemed to insinuate that eavesdropping on Americans was acceptable because FISA was an outdated law and could not address the needs of the Government in combating the new war on terror. This is a patent falsehood. The USA PATRIOT Act expanded FISA significantly, equipping the Government with the tools it needed to fight terrorism. Further amendments to FISA were granted under the Intelligence Authorization Act of 2002 and the Homeland Security Act of 2002. In fact, in its final report, the 9/11 Commission noted that the removal of the