

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

pre-9/11 “wall” between intelligence officials and law enforcement was significant in that it “opened up new opportunities for cooperative action.”

But the President claims—hear me!—that these powers are within his role as Commander in Chief of the Army and Navy. Make no mistake, the powers granted to the Commander in Chief in this Constitution are specifically those as head of the Armed Forces.

These warrantless searches are conducted not against a foreign power but against whom? Against unsuspecting and unknowing American citizens—like you, like you, like you, and like you! They are conducted against individuals living on American soil—not in Iraq, not in Afghanistan. There is nothing within the powers granted in the Commander in Chief clause that grants the President the ability to conduct clandestine surveillance of American civilians. Nothing. We must not allow such groundless, foolish claims to stand unchallenged.

Now, the President claims boundless authority, an unlimited authority through the resolution that authorized war on those who perpetrated the September 11 attacks. But that resolution does not give the President unchecked power to spy on our own people. Read it. That resolution does not give the President unchecked power to spy on our own people. That resolution does not give the White House, this administration, the power to create covert prisons for secret prisoners. That resolution does not authorize the torture of prisoners to extract information from them. That resolution does not authorize running black hole secret prisons in foreign countries to get around U.S. law. That resolution does not give this President, or any President, the powers reserved only for kings and potentates.

I continue to be shocked and astounded by the breadth with which this administration undermines the constitutional protections afforded to the people—the people—and the raw arrogance with which it rebukes the powers held by the legislative and judicial branches. The President has cast off Federal law enacted by Congress, often bearing his own signature, as mere formality. He has rebuffed the rule of law, and he has trivialized and trampled upon, trampled under foot the prohibitions against unreasonable searches and seizures guaranteed to Americans by the United States Constitution. This Constitution still lives. This Constitution was made for all time, for all administrations, for all Presidents, for all Senators.

We are supposed to accept these dirty little secrets, and we are told that it is irresponsible to draw attention to President Bush’s gross abuse of power and constitutional violations. But what is truly irresponsible is to neglect to uphold the rule of law.

We listened to the President speak last night on the potential for democracy in Iraq. The President claims to want to instill in the Iraqi people a

tangible freedom and working democracy, at the same time that he violates our own U.S. laws and checks and balances. President Bush called the recent Iraqi election “a landmark day in the history of liberty.” I daresay in this country we may have reached our own sort of landmark. Never have the promises and protections of liberty seemed so illusory, so fleeting. These renegade assaults on the Constitution and our system of laws strike at the very core of our values and foster a sense of mistrust and apprehension about the reach of Government.

I am reminded of Thomas Payne’s famous words: “These are the times that try men’s souls.”

These astounding revelations about the bending, the twisting, the stretching, and contorting of the Constitution to justify a grasping, irresponsible administration under the banner of “national security” are an outrage. Congress can no longer sit on the sidelines. It is time to ask hard questions of the Attorney General. It is time to ask hard questions of the Secretary of State, of the Secretary of Defense, and of the Director of the CIA. The White House should not be allowed to exempt itself from answering the same questions simply because it might assert some kind of “executive privilege” in order to avoid further embarrassment.

The practice of domestic spying on citizens should stop immediately. Oversight hearings need to be conducted. Judicial action may be in order. We need to finally be given answers to our questions: Where is the constitutional and statutory authority for spying on American citizens? Where? Where is that authority to be found?

What is the content of these classified legal opinions asserting that there is a legality in this criminal usurpation of rights?

Who is responsible for this dangerous and unconstitutional policy?

How many American citizens’ lives have been unknowingly affected?

Mr. President, fellow Senators, let us in our day remember the words of Brutus to Cicero:

Our ancestors scorned to bear even a gentle master!

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

#### UNITED STATES CONSTITUTION

Mr. DURBIN. Mr. President, I come to the floor to commend my colleague from West Virginia, ROBERT C. BYRD. Some of the people who are witnessing this session of the Senate had a chance to hear this man speak just moments ago. I do not know of another Senator more dedicated to our U.S. Constitution or one who has been more fearless in attacking Presidents of both political parties when he thinks that they have gone too far. Senator BYRD’s speech should be read by every American as a reminder of basic freedoms in

this country that we should never, ever take for granted.

I listened to his speech as I was sitting in my office and I thought I would come to the Chamber and try to follow in his footsteps, though what I have to offer cannot possibly match what he had to say.

Several things have occurred over the last several years which are historic in nature and troubling. This administration has decided on three occasions, at least three separate occasions, to depart from the traditions of America, traditions which we have followed for generations, Presidents, Republican and Democratic alike.

It was this administration which told us we could no longer wait to be threatened by another country, we could no longer wait to be attacked by another country, we must act preemptively, we must strike first, based on intelligence and information we must attack first, and that is why we invaded Iraq. What did that intelligence lead us to believe? That Iraq had weapons of mass destruction threatening the United States and our allies; that Iraq was developing nuclear weapons that could threaten the Middle East and the United States; that Iraq was in concert in some way with al-Qaida and responsible for the 9/11 attacks; that Iraq was securing fissile material from Africa to manufacture into nuclear weapons. All of those things were told to the American people, some by the President in his State of the Union address, and every single one of them turned out to be wrong.

The President told us we needed to attack Iraq for those reasons, and it turned out none of the reasons were valid, not one. So he would change the foreign policy of the United States not to wait and carefully make a decision about whether we commit our troops and our treasure but, rather, to move preemptively—a departure from foreign policy for generations.

Secondly, this administration said that we had to depart from the traditions of the United States for generations when it came to the interrogation of prisoners. This Bush administration argued that we had to redefine torture in a way that was inconsistent with treaties the United States has accepted as law of the land. Terrible things occurred. We saw the worst of them in some of the photos from Abu Ghraib and reports from other agencies.

Thank goodness for the leadership of Senator JOHN MCCAIN, a Republican of Arizona, himself a POW in the Vietnam War, also a victim of torture in that experience, who stood up to the administration and said, You are wrong. Torture is not American. If we are fighting for values, those values cannot include torture.

He was responding to our troops who were writing to Members of Congress saying, Give us clarity, give us direction, tell us if the world has changed;