soldiers, graduates of West Point, who were told we do not engage in torture as soldiers representing the flag of the United States of America. Thank goodness for the leadership of Senator MCCAIN in confronting the Bush administration and forcing them to back down when it came to this dramatic change in the standards for torture.

Now comes another chapter in changing the tradition of America under this administration relative to our right of privacy as American citizens, the PATRIOT Act, which I voted for to give this Government more powers to fight terrorism, but we said every 4 years we will look at it to make certain we have not gone too far, that we have not given up our basic rights and freedoms in the name of security and safety.

Now we are involved in a debate. My colleague from Alabama has been to the floor several times. As a former prosecutor, he argues that under the PATRIOT Act we have to trust the Government, we have to trust the prosecutors, not to go too far. Unfortunately, that is not the standard in America. The standard in America says in this Constitution, this Bill of Rights, that our basic freedoms are guaranteed to us, and before this Government takes those freedoms or infringes upon them, there must be good reason and good cause.

Last week, on a bipartisan basis, we said, Stop this version of the PATRIOT Act, make certain that changes are made so that the freedoms and rights of Americans are protected. In the midst of that debate came a revelation which is truly astounding, a revelation that for years the Bush administration, through Government agencies, has been involved in wiretaps and eavesdropping on American citizens. The reason this is of concern, of course, is that it violates a longstanding legal requirement that the Government has to obtain a court order to eavesdrop electronically on an American in the United States. We spell out with specificity what the Government must do if it is going to invade our privacy, listen to our conversations, hack into our computers, whatever it may be. The grounding for that is not just some speech on the Senate floor or the House; the grounding for that is this Constitution, where its fourth amendment makes it clear from the beginning of this Nation the standard we would use, a standard worth repeating in the fourth amendment:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

That is in our Constitution that we have sworn to uphold. And for thousands of unsuspecting Americans, their basic records, their communications, their computers have been looked at and listened to by this Government, without legal authority.

So therein lies the third dramatic departure of this administration, from a tradition which most of us assumed would never be violated, a tradition which says that our privacy can be compromised if a President assumes the power to do it. This President did not come to Congress saying, I need powers to listen to America's conversations. No. He just did it. He said he has the power to do it as Commander in Chief.

Well, there are some obvious questions that should be asked when we hear these things. Where is the concern in Congress? Where is the sense of outrage in the Senate? Where is the sense of obligation that our generation owes to our children to make certain that we are held accountable to protect their constitutional rights? I am glad that Senator SPECTER of the Judiciary Committee has said we will have a hearing on this, and we should. This is a serious matter.

Some of us saw recently a movie about Edward R. Murrow titled ''Good Night and Good Luck.'' I remember Edward R. Murrow. As a young boy, I used to see him on television from time to time. This movie depicts the McCarthy era where the Congress in this case overstepped its authority, and one Senator from Wisconsin literally destroyed lives, literally infringed on the rights and liberties of individual citizens. The sense of outrage in America rose to such a level that eventually he was called to task and discredited for what he had done in violation of the basic rights of American citizens. It took some time. In the beginning, the red scare kept people quiet, they did not want to raise this issue.

Sadly, in this war on terrorism, we may be going through a parallel moment in history, where our fear of another 9/11 has kept us entirely too quiet and silent when this Government has gone too far. I hope what we have learned about this wiretapping and this eavesdropping, these violations of basic rights of citizens, will cause all Americans, not just those of us serving in the Senate, to stand up and speak out. If we swore to uphold this Constitution, it was not just the paper that it is written on but the spirit and values that it stands for, values of privacy and freedom which once lost may never be reclaimed.

I urge my colleagues to read carefully the earlier remarks of Senator ROBERT BYRD and consider carefully our individual responsibilities.

I yield the floor.

Mr. CRAIG. Mr. President, may I ask what the order is at this moment?

The PRESIDING OFFICER. The Senate is in morning business, with Senators permitted to speak for up to 10 minutes.

APPEALS REFORM ACT LANGUAGE

Mr. CRAIG. Mr. President, I rise today to express my concern that language was not included yet again by this Congress in the supplemental bill—which is now embodied in Defense appropriations—to clarify that categorical exclusions as used by the U.S. Forest Service under the Appeals Reform Act of 1993 are exempt from comment and appeals.

That sounds technical, doesn't it? It isn't so technical if you believe in the Healthy Forest Act and the ability of the Forest Service, as so prescribed by the Congress, to operate under that specific act. A legislative fix is desperately needed as projects continue to pile up and create additional backlog for our U.S. Forest Service.

At the heart of this issue is when, where, and how the public is included in the execution of categorical exclusions extended in the projects. By definition, categorically excluded projects are categories of action which do not individually or cumulatively have a significant effect on the human environment and therefore normally do not require further analysis in either an environmental assessment or an environmental impact statement. The Forest Service requires scoping on each and every project on Forest Service land in which they want to utilize the categorical exclusion.

Let me quote from the Forest Service Environmental Procedures Handbook:

> Scoping is required on all proposed actions, including those that would appear to be categorically excluded.

In other words, those actions the Forest Service may take on Forest Service ground in a given watershed that we have said are excluded under the Healthy Forest Act, as it relates to the National Environmental Policy Act—meaning an environmental impact statement—we still say the Forest Service scoping is required on all proposed actions, including those that would appear not to need a categorical exclusion.

> If the responsible officials determine, based on scoping, that it is uncertain whether the proposed action may have a significant effect on the environment, prepare an EA [and that is chapter 40]. If the responsible official determines, based on scoping, that the proposed actions may have a significant environmental effect, prepare an EIS.

That is an environmental impact statement.

In other words, we have tried to be very careful within the law to make sure that happens. I am going to submit for the RECORD a much more detailed understanding of what exactly we mean because it is critically important at this moment that we allow the Forest Service to get back on track.

Having said that, I have talked legalese as it relates to a specific act of Congress and a law that is in place now for our Forest Service to act. What does it mean in real life, what does it mean on the ground? I think all of us witnessed the fires of late fall and early winter in the greater Los Angeles watershed that were burning the scrub oak in the foothill country in back of Los Angeles. In most instances, those

fires in the past have not only consumed the scrub oak, they have consumed, in some instances, hundreds of beautiful and very expensive homes that are within those areas. This year, it is interesting that, of the thousands of acres that were burned, only one home was burned.

In talking to the firefighters, why were they able to control the fires in a better way and why were fewer homes lost, they said very clearly, because it was the thinning and the cleaning of the brush and undergrowth that was allowed by the categorical exclusions of the Healthy Forest Act. In other words, the fuel buildup that naturally occurs on public lands, and in this instance in urban watersheds in which the Healthy Forest Act is more specific, categorical exclusions were granted. In other words, the scoping process of the Forest Service to determine the impact that the action of cleaning and thinning would have on public lands was determined not to be of major environmental consequence, and therefore the Forest Service was allowed to proceed.

Along comes a judge just this summer and says: no no, you have to do an EA, you have to do an EIS, on all, including those provisions the Congress spoke specifically to as it related to categorical exclusions. In other words, within the category an exclusion is allowed for certain actions on forested public lands for the purpose of sustaining the quality of the watershed and the health of the forest, and so on and so forth.

What is clearly a loss now is that the Forest Service, in planning for next year's actions on the ground—the thinning and the cleaning of our forests to ensure forest health, to bring down the overall threat of fire—has been dramatically diminished by this judge's action.

We had hoped in the supplemental to gain the language necessary to reinstate the categorical exclusions, as was and as has been clearly debated as the intent of Congress. That has been denied. So when Congress reconvenes in January and early February, we are going to have to work overtime to make sure that we get this law into place.

What does it mean? It means protecting watersheds. It means protecting homes that have been built up against the forested lands, doing the right kinds of actions which result in the cleaning up of our forests and the ensuring of the vitality of the environment within.

What the judge's action means in essence is that you have to spend tens of millions of dollars perfecting an EA—or in this instance a full environmental impact statement—to be able to proceed. We believe that under certain circumstances where the health of the forest is critical, and in this instance the Los Angeles Basin, where we saw the action of being able to control fires because the overall fuel load on our public lands was dramatically reduced by the thinning and the cleaning in that region of the country—without that we simply will not be able to move forward as expeditiously as the Healthy Forest Act intended that we move. That is what is at issue here. I had hoped we would gain that. We have not gained that in the DOD appropriations and supplemental language that was applied.

Federal lands recovery work that is going on in Mississippi and Louisiana and Texas, work that was caused by the hurricanes Katrina and Rita, is now included in this problem. So are, overall, 800 planned, categorically excluded low-impact projects and hazardous fuel reduction projects affecting over 234 communities and 200 currently planned, prescribed burning projects that, if delayed, would more than likely put them beyond optimum and safe burning conditions, delayed because of the action of the judge and therefore pushed off for another year.

That is the critical nature of this issue and why I have come to the Chamber. As one of the chief cosponsors of the 1993 Appeals Reform Act, I know we had no expectation or belief that categorical exclusions placed in 1993 would be subject to the Appeals Reform Act. It is important that we move forward to clarify this language.

I understand some on this floor today think otherwise.

Perhaps it would be wise to review the amount of public participation involved in the development of the Categorical Exclusions regulations that both the Clinton administration and then the Bush administration have developed since the Appeals Reform Act was first passed in 1993.

In the mid-1990s, the Clinton administration proposed significant changes to the Categorical Exclusions. They did this through an Administrative Procedures Act—APA—rulemaking process which included both a proposed and final rulemaking, including extensive review of numerous public comments.

Those categorical exclusions withstood a number of legal challenges and remained in place until 2003.

In 2000, the Bush administration undertook extensive analysis of thousands of projects to develop a series of new categorical exclusion proposals.

After review of literally thousands of projects the Bush administration proposed a number of changes to the Clinton administration's categorical exclusions. They did this through an APA rulemaking that again included extensive public comments.

I think it is important that my fellow Senators understand that the original Heartwood II settlement agreement, which attempted to nullify categorical exclusions, was rejected by the District Court in which it was brought and the case was dismissed.

Now, the Eastern District Court of California has chosen to resurrect that settlement agreement and impose it nationally.

I know that some people in the Chamber today may still be concerned that the land managers may miss something and not realize there could be a potential problem.

Between the scoping that is required, the extraordinary assessment that is required, and the public notice requirements that will be required if this language is maintained, it is inconceivable to me that projects that might be environmentally detrimental could be carried out through the categorical exclusion process.

This body should reject the efforts of the ''gum up the works'' crowd who want more process to slow down more projects.

The current categorical exclusions are based on more data and analysis than anytime in history.

We have more protections to ensure they are not misused than anytime in history, and we will have more public notice on categorical exclusions than anytime in history if we adopt the language in this bill.

I hope this Congress sees fit to address this situation before it is too late. We thought we could. We will have to return early next year to get that kind of work done.

What is at stake now is the health of the forest, the health of the watershed, and literally hundreds of thousands of homes spread across the landscape that are about or near public forest, public lands, that could find themselves in a condition that would jeopardize their presence by fire, which could ensure where fuel-laden lands exist.

I thought it was important that I submit that for the RECORD because it is critically important that we move forward on that issue.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

THE PATRIOT ACT

Mr. DAYTON. Mr. President, last Saturday, President Bush castigated those of us who voted against cloture on the PATRIOT Act. He said:

> That decision is irresponsible and it endangers the lives of our citizens.

That is a mistaken characterization. Every Senator supported the Senate's reauthorization of the PATRIOT Act last July when it passed the Senate unanimously.

Last Friday, 47 of us said the House-Senate conference report is not yet good enough. Before we make the PATRIOT Act permanent, we must make it right.

The PATRIOT Act that we passed 4 years ago, which I supported, gave the Federal Government unprecedented powers to conduct surveillance on American citizens and demand information about their private activities, about their personal lives. We passed the PATRIOT Act hastily in the Senate 4 years ago, too hastily in retrospect. We passed it when my caucus was in the majority. So we, and I, were