

Saki Bercovitch.—Gordon Hutner, Professor of American Literature, University of Illinois, Editor, American Literary History.

RESTORE ACT OF 2007

SPEECH OF

HON. SHEILA JACKSON-LEE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 15, 2007

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise in strong support of H.R. 3773, the “Responsible Electronic Surveillance That Is Overseen, Reviewed, and Effective Act of 2007.” I support this legislation, the RESTORE Act, because it corrects the damage done by the misnamed Protect America Act and restores this Nation’s commitment to the rule of law, the dignity of the individual, and the separation of powers. This legislation is worthy of an aye vote from all Members because it restores allegiance to the Constitution and gives our intelligence agencies all the tools they need to conduct the foreign surveillance necessary to keep our country safe.

Mr. Speaker, in August of this year, I strongly opposed S. 1927, the so-called “Protect America Act” (PAA) when it came to a vote on the House floor. And I was a very reluctant supporter of H.R. 3356, the House alternative that attracted a majority of votes, but not a two-thirds super-majority, on the House floor. Had the Bush Administration and the Republican-dominated 109th Congress acted more responsibly in the two preceding years, we would not have been in the position of debating legislation that had such a profoundly negative impact on the national security and on American values and civil liberties in the crush of exigent circumstances. As that regrettable episode clearly showed, it is true as the saying goes that haste makes waste.

The PAA was stamped through the Congress in the midnight hour of the last day before the long August recess on the dubious claim that it was necessary to fill a gap in the Nation’s intelligence gathering capabilities identified by Director of National Intelligence Mike McConnell. But in reality it would have eviscerated the Fourth Amendment to the Constitution and represented an unwarranted transfer of power from the courts to the Executive Branch and a Justice Department led at that time by an Attorney General whose reputation for candor and integrity was, to put it charitably, subject to considerable doubt.

The legislation before us, the RESTORE Act, H.R. 3773 is superior to the PAA by orders of magnitude. This is due in no small measure, Mr. Speaker, to the willingness of the leadership to reach out to and work with all members of the House. The result shows. The RESTORE Act does not weaken our Nation’s commitment to its democratic traditions. Rather, it represents a sound policy proposal for achieving the only legitimate goals of a terrorist surveillance program, which is to ensure that American citizens and persons in America are secure in their persons, papers, and effects, but terrorists throughout the world are made insecure. Let me direct the attention of all members to several of the more important aspects of this salutary legislation.

First, H.R. 3773 explicitly affirms that the exclusive law to follow with respect to au-

thorizing foreign surveillance gathering on U.S. soil is the Foreign Intelligence Surveillance Act (FISA). As initially enacted by Congress in 1978, the exclusivity of FISA was undisputed and unambiguous. I hasten to add, however, that while FISA remains the exclusive source of law, H.R. 3773 recognizes that the law as enacted in 1978 can and should be adapted to modern circumstances and to accommodate new technologies. And it does so by making clear that foreign to foreign communications are not subject to the FISA, even though modern technology enables that communication to be routed through the United States.

Second, under H.R. 3773, the Foreign Intelligence Surveillance Court (FISC) is indispensable and is accorded a meaningful role in ensuring compliance with the law. The bill ensures that the FISC is empowered to act as an Article III court should act, which means the court shall operate neither as a rubber-stamp nor a bottleneck. Rather, the function of the court is to validate the lawful exercise of executive power on the one hand, and to act as the guardian of individual rights and liberties on the other.

Third, the bill does not grant amnesty to any telecommunications company or to any other entity or individual that helped Federal intelligence agencies spy illegally on innocent Americans. I strongly support this provision because granting such blanket amnesty for past misconduct will have the unintended consequence of encouraging telecommunications companies to comply with, rather than contest, illegal requests to spy on Americans. The only permissible path to legalization of conduct in this area is full compliance with the requirements of the Foreign Intelligence Surveillance Act.

Moreover, Mr. Speaker, it is important to point out that the loudest demands for blanket immunity comes not from the telecommunications companies but from the Administration, which raises the interesting question of whether the Administration’s real motivation is to shield from public disclosure the ways and means by which government officials may have “persuaded” telecommunications companies to assist in its warrantless surveillance programs. I call my colleagues’ attention to an article published in the Washington Post last Sunday, in which it is reported that Joseph Nacchio, the former CEO of Qwest, alleges that his company was denied NSA contracts after he declined in a February 27, 2001 meeting at Fort Meade with National Security Agency (NSA) representatives to give the NSA customer calling records.

Mr. Speaker, the authorization to conduct foreign surveillance on U.S. soil provided by H.R. 3773 is temporary and will expire in 2 years if not renewed by the Congress. This is perhaps the single most important limitation on the authority conferred on the Executive Branch by this legislation. The good and sufficient reason for imposing this limitation is because the threats to America’s security and the liberties of its people will change over time and thus require constant vigilance by the people’s representatives in Congress.

To give a detailed illustration of just how superior the RESTORE Act is to the ill-considered and hastily enacted Protect America Act, I wish to take a few moments to discuss an important improvement in the bill that was adopted in the full Judiciary Committee markup.

The Jackson-Lee Amendment added during the markup made a constructive contribution to the RESTORE Act by laying down a clear, objective criterion for the Administration to follow and the FISA court to enforce in preventing reverse targeting.

“Reverse targeting,” a concept well known to members of this Committee but not so well understood by those less steeped in the arcana of electronic surveillance, is the practice where the government targets foreigners without a warrant while its actual purpose is to collect information on certain U.S. persons.

One of the major concerns that libertarians and classical conservatives, as well as progressives and civil liberties organizations, have with the PAA is that the understandable temptation of national security agencies to engage in reverse targeting may be difficult to resist in the absence of strong safeguards in the PAA to prevent it.

My amendment reduces even further any such temptation to resort to reverse targeting by requiring the administration to obtain a regular, individualized FISA warrant whenever the “real” target of the surveillance is a person in the United States.

The amendment achieves this objective by requiring the administration to obtain a regular FISA warrant whenever a “significant purpose of an acquisition is to acquire the communications of a specific person reasonably believed to be located in the United States.” The current language in the bill provides that a warrant be obtained only when the Government “seeks to conduct electronic surveillance” of a person reasonably believed to be located in the United States.

It was far from clear how the operative language “seeks to” is to be interpreted. In contrast, the language used in my amendment, “significant purpose,” is a term of art that has long been a staple of FISA jurisprudence and thus is well known and readily applied by the agencies, legal practitioners, and the FISA Court. Thus, the Jackson-Lee Amendment provides a clearer, more objective, criterion for the administration to follow and the FISA court to enforce to prevent the practice of reverse targeting without a warrant, which all of us can agree should not be permitted.

Let us be clear, Mr. Speaker, that nothing in the bill or in my amendment requires the Government to obtain a FISA order for every overseas target on the off chance that they might pick up a call into or from the United States. Rather, the bill requires, as our amendment makes clear, a FISA order only where there is a particular, known person in the United States at the other end of the foreign target’s calls in whom the Government has a significant interest such that a significant purpose of the surveillance has become to acquire that person’s communications.

This will usually happen over time, and the Government will have the time to get an order while continuing its surveillance. And it is the national security interest to require it to obtain an order at that point, so that it can lawfully acquire all of the target person’s communications rather than continuing to listen to only some of them.

The Jackson-Lee amendment gives the Government precisely what Director of National Intelligence McConnell asked for when he testified before the Senate Judiciary Committee: “It is very important to me; it is very important to members of this Committee. We

should be required—we should be required in all cases to have a warrant anytime there is surveillance of a US [sic] person located in the United States."

In short, the Jackson-Lee amendment makes a good bill even better. For this reason alone, civil libertarians should enthusiastically embrace the RESTORE Act.

Nearly 2 centuries ago, Alexis de Tocqueville, who remains the most astute student of American democracy, observed that the reason democracies invariably prevail in any martial conflict is because democracy is the governmental form that best rewards and encourages those traits that are indispensable to martial success: initiative, innovation, resourcefulness, and courage.

Mr. Speaker, the best way to win the war on terror is to remain true to our democratic traditions. If it retains its democratic character, no nation and no loose confederation of international villains will defeat the United States in the pursuit of its vital interests.

Thus, the way forward to victory in the war on terror is for the United States country to redouble its commitment to the Bill of Rights and the democratic values, which every American will risk his or her life to defend. It is only by preserving our attachment to these cherished values that America will remain forever the home of the free, the land of the brave, and the country we love.

HONORS CHRIST EPISCOPAL CHURCH OF STRATFORD, CONNECTICUT AS THEY CELEBRATE THEIR 300TH ANNIVERSARY

HON. ROSA L. DELAUR

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, December 4, 2007

Ms. DELAUR. Madam Speaker, it is with great pleasure that I rise today to join the Reverend Robert Stuhlmann, members of the congregation, and the Stratford community in extending my sincere congratulations to Christ Episcopal Church as they celebrate its 300th Anniversary. This is a milestone for this community treasure and I am proud to help them celebrate.

As we gather to celebrate this anniversary, we can also reflect on the inspiration the Christ Episcopal Church had in the creation of the United States of America. The Church holds a unique place not only in Connecticut's history, but in that of our nation as well. The first parishioners of this parish were actually forced to worship secretly in people's homes to avoid harassment by the then dominant Congregationalists who had fled to the New World to escape persecution by the Church of England. In fact, many of the twelve men who established the parish were jailed for their defiance of the General Court of Connecticut which deemed there could only be one church—and it was Congregational.

Reverend Robert Stuhlmann, the 30th pastor of Christ Episcopal Church, has described the birth of the Anglican Church in the United States as mirroring that of our nation. Just eighty years after the formation of Christ Episcopal, the Church would play a direct role in the creation of our Constitution. Among the Connecticut delegation, the framers of the Constitution, was William Samuel Johnson,

son of Samuel Johnson, the church's first resident priest. It is said that the Constitution took its final form based on the experiences of the Christ Episcopal parish as they encountered the opposition of an established religion in Connecticut. Samuel Johnson, who also served as the first president of Kings College, or what is known today as Columbia University, also left his mark on the Declaration of Independence. We all know the phrase "life, liberty, and the pursuit of happiness" but what many may not know is that the phrase pursuit of happiness was one which Samuel Johnson frequently used in his preaching—believing that God desires humanity to be happy.

Since its inception in 1707, Christ Episcopal Church has been an integral part of our community and has now grown to its current 223 parish families like 100-year old Clint Brelsford who has derived happiness as a parishioner for 97 years. Our churches play a vital role in our communities—providing people with a place to turn to for comfort when they are most in need. By strengthening our bonds of faith, Christ Episcopal gives its members a place to find their spiritual center and to solidify and support their values. The members of this special parish have also given much to the Town of Stratford. Throughout the years, as their membership grew so did their commitment to the enrichment of our community.

Christ Episcopal Church is so much more than simply a place of worship—it is the center of spiritual and community life for its members. For three hundred years, Christ Episcopal Church has been a fixture in Stratford. Through their ministry and outreach efforts, they have left an indelible mark on our community and continue to enrich the lives of others. I am proud to stand today and extend my best wishes to them as they mark this milestone in their history. Happy 300th Anniversary!

TRIBUTE TO MR. SHAUN HEENAN

HON. BRIAN HIGGINS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, December 4, 2007

Mr. HIGGINS. Madam Speaker, I rise today to honor Mr. Shaun Heenan of the city of Dunkirk, New York, for his recent election as a member of the Chautauqua County Legislature. Following a close election victory on November 7, Mr. Heenan will represent the second district in the Legislature beginning January 1, 2008.

The campaign trail is a difficult path to take. Any person with a dream may enter but only a few are able to reach the end. Mr. Heenan traveled that path with his head held high and a smile on his face the entire way. I have no doubt that his kind demeanor left a lasting impression on the voters of Chautauqua County.

Chautauqua County is blessed to have such strong candidates with a desire to make this county the wonderful place we all know it can be. Mr. Heenan is one of those people, and that is why, Madam Speaker, I rise to honor him today.

A PROCLAMATION HONORING THE UNIVERSITY OF IDAHO LIONEL HAMPTON INTERNATIONAL JAZZ FESTIVAL

HON. BILL SALI

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, December 4, 2007

Mr. SALI. Madam Speaker, I rise today in joining President George W. Bush in honoring the University of Idaho's Lionel Hampton International Jazz Festival. President Bush presented the National Medal of Arts award to University of Idaho President Timothy P. White in a White House ceremony yesterday.

The University of Idaho, located in Moscow, Idaho, is the first public university to receive this award since it was created by Congress in 1984. The award honors one of the Nation's premier jazz festivals, named in honor of the late, great jazz musician Lionel Hampton. I should note that the University of Idaho holds a special place in my heart, as I attended the university's law school, graduating in the class of 1984.

As described by the University of Idaho, "The festival began in 1967 and grew in presence and prestige through the decades. In 1985, the festival was renamed the Lionel Hampton/Chevron Festival in Mr. Hampton's honor and was rededicated as the Lionel Hampton International Jazz Festival in 2006. Mr. Hampton died in 2002 at the age of 94."

Lionel Hampton's vision of providing opportunities for professional musicians to mentor young, aspiring jazz artists has made the festival a remarkable success. A festival that began as a 1-day event has now evolved into a 4-day event that includes four concerts by professional jazz musicians, three student concerts and student performances that take place in 20 different locations on the campus and throughout the community. The festival also hosts a series of workshops.

This year's attendance included approximately 10,000 students from more than 300 schools, in addition to teachers, parents and local jazz enthusiasts. The festival has drawn leading jazz artists from around the world, including current director and six-time Grammy-nominated artist John Clayton, the late queen of jazz, Ella Fitzgerald, legendary trumpeter Dizzy Gillespie and renowned jazz innovator Bobby McFerrin, among many others. The festival will celebrate its 41st anniversary February 20–23 of next year. I urge all my colleagues to join me in congratulating University President White, Festival Director Clayton, and former festival director Lynn "Doc" Skinner in accepting this tremendous honor on behalf of the University of Idaho.

CONGRATULATIONS TO CARROLL SENIOR HIGH AND CARROLL HIGH SCHOOL ON THEIR 5A GIRLS STATE CROSS COUNTRY STATE CHAMPIONSHIP

HON. KENNY MARCHANT

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, December 4, 2007

Mr. MARCHANT. Madam Speaker, it is with great pride and pleasure that I rise to honor