those who are among us that need us the most: our Nation's children. It is a private program because private doctors, private insurance plans, and private hospitals deliver the health care. It spends $3.50 per day for a child like Kailee.

But Kailee doesn't live alone. She lives in a family and in a community, and allow me now to introduce you to her mother and her new sister. This is Kailee's mother, Wendy, who is a food server. She's a waitress. And she earns $2.33 per hour and tips. She is working hard to support her family and lives with her husband, Keith. Keith takes care of the children while Wendy is working. And this young girl, Cassidy, is 3 months of age. Cassidy doesn't understand health care. She only knows that she gets hungry and she has her mother to care for her.

This country, our Nation, must decide what kind of a Nation we are and in which direction we are going to turn. In several days we will decide here in Congress whether or not to override a veto, which I believe to be morally unacceptable. We cannot say no to our Nation's children. We must accept the responsibility of caring for those who are most in need.

That is not just my point of view. This bill is supported by everyone who is involved in delivering health care in this country, the American Medical Association, the American Nursing Association, and more. The American College of Allergy, Asthma & Immunology; the American Academy of Family Practice; the Federation of American Hospitals; the American Hospital Association; Catholic Charities; the March of Dimes; Lutheran Services; the U.S. Conference of Catholic Bishops; and more and more.

Everyone understands that we as a Nation must care for our Nation's children first because if our children are healthy, they will be in school and be able to learn and gain the education that they require to compete in this global marketplace. But it all starts right here Thursday morning when this House must vote to override President Bush's veto.

I believe we are at a precipice here in our country. It is getting dark, but it's not dark yet. We have to stand up for those who are among us that need us the most. Please reconsider your votes. Our people, our children need us. Please reconsider your votes.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Virginia (Mr. MORAN) is recognized for 5 minutes.

(Mr. MORAN of Virginia addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

□ 2000

## FISA

The SPEAKER pro tempore. Under the Speaker's announced policy of January 18, 2007, the gentleman from California (Mr. DANIEL E. LUNGREN) is recognized for 60 minutes as the designee of the minority leader.

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, thank you for the recognition.

And I would say that this week ought to be known as ''FISA week.'' The reason I say that is because this week we will make an important vote on determining whether or not we will have the ability to defend our country, both now and in the future.

As we have moved on a bipartisan basis since 9/11 to attempt to meet the challenge of the threat internationally that is sometimes called the ''war on terror,'' sometimes called the ''war of Islamo-fascism,'' sometimes called the ''war on radical jihad,'' no matter what the name, the American people know what it is we are speaking of. We have, in this House, in the Senate and in the executive branch adopted an analysis which allows us to respond in the most effective way, and that analysis is a risk-based analysis. And simply put, broken down into its constituent parts, risk equals threat plus vulnerability plus consequence.

The interesting thing in this equation is that the knowledge base of the bottom two elements, vulnerability and consequence, are within our grasp. Now, what do I mean by that? What I mean by that is vulnerability is our ability to assess how vulnerable our assets are that might be attacked by the enemy surrounding us. We can make educated judgments with respect to those assets, their value, how they could be attacked or destroyed, and how we can protect them against such attack or attempt of destruction.

Similarly, consequence is within our knowledge base. We know, with a successful attack, what the consequence would be. For instance, if the attack were lodged against a dam, a catastrophic event, a collapse of a dam as a result of an attack, we can measure what the consequences would be. How? Well, we know the number of people that would be in the way. We know the number of buildings that would be in the way. We can make a determination as to the overall destructive power of the surging water that would come through a destroyed dam. We can make an educated judgment as to the time by which those assets that would be destroyed, the time it would take to restore such assets, such as highways, byways, such as shopping malls, homes, hospitals, all of those sorts of things. So, within our risk assessment, we are capable, more or less, of determining what our vulnerability is and what the consequences of a successful attack would be.

There is a third element, threat, which is not as much in control of our already existing knowledge. Why? Because threat essentially is the intention of the enemy, the targets of the enemy, the timing of the enemy. That's what, in fact, a threat is. So, since that knowledge base is not within our power, essentially, how do we deal with that? How do we calculate what the threat is? We do so by utilizing intelligence. We gather intelligence. We find information from the other side, if you will, of the battle.

This is not a novel approach. It is recognized in the Constitution and the interpretations of the Constitution by the Supreme Court and other Federal courts from the beginning of this Republic in that it is recognized that the President of the United States was given Commander-in-Chief powers. Why? Because of the failure of the Continental Congress, because of the failure of the first Confederation of States when they found that you could not have multiple commanders in chief. You had to have a single executive, particularly in the area of war, defense of our country, or relationships with foreign governments.

Now, implicit in the ability or the capability of a Commander-in-Chief to exercise military strength on behalf of the Nation to defend itself, that is, to destroy those who would attempt to destroy us, yes, to give the President of the United States the power to exercise lethal action against the enemy, and that means, quite frankly, to wound or kill the enemy, to stop the enemy from destroying us, implicit in that authority is the authority to gather intelligence, the authority to gather foreign intelligence. In other words, one of the ways you find out what the enemy is to do on the battlefield is to find out what he is saying, the conversations that take place on the other side, the plans that they are developing, and the commands that they give to carry out their intended lethal action. That, essentially, is foreign intelligence.

And what we are going to vote on this week is something called the Foreign Intelligence Surveillance Act, FISA. Now, the reason I bring this to the floor and I spell out these words is to remember what the focus of this bill is. It is on foreign intelligence, not domestic intelligence, not the ability to try and stop the mob from acting in the United States, not the ability to stop certain criminals in the United States from committing a crime or to investigate after they've committed the crime in order to prove up the case against them and to give them their just punishment, but rather, foreign intelligence, intelligence which deals with foreign governments, foreign powers, and associated organizations or people.

The FISA Act was passed by the Congress in 1978, intended to establish a statutory procedure authorizing the use of electronic surveillance in the United States against foreign powers or agents of foreign powers. FISA established two new courts. First, the Foreign Intelligence Surveillance Court, which authorizes such electronic surveillance, and secondly, the U.S. Foreign Intelligence Surveillance Court of Review, which has jurisdiction

to review any denial of an order under FISA. These courts are made up of Federal judges from around the country, and they meet in secret session here in Washington, D.C.

I would note that the House Permanent Select Committee on Intelligence report that accompanied FISA in 1978 clearly expressed Congress' intent to exclude from coverage overseas intelligence activities. In other words, they never intended for the FISA court and procedure to somehow have authority over what is truly overseas intelligence activities dealing with foreign intelligence or intelligence of foreign governments or foreign organizations.

The report stated this: ''The Committee has explored the feasibility of broadening this legislation to apply overseas, but has concluded that certain problems and unique characteristics involved in overseas surveillance preclude the simple extension of this bill to overseas intelligence.'' In other words, it was not the focus of the 1978 act, rather, the act focused on domestic surveillance of persons located within the United States. The law was crafted specifically to exclude surveillance operations against targets outside the U.S., including those circumstances where the targets were in communication with Americans, as long as the U.S. side of the communication was not the real target. That's a very important thing to understand.

In the ability to be able to record these messages or in some way pick up these communications, you really have the ability to target one side of the communication. And so what we do is we target a foreign person in a foreign country.

Contrary to what Congress originally intended, due to the changes in technology and resulting interpretation of the FISA Act, warrants have been recently required in order to conduct surveillance against terrorists located overseas in some circumstances. Why? The technology changed in that, in 1978, most local communication was by wire, most international communication was wireless by satellite. We could take it basically out of the air, for want of a better description, and it was overseas. The 1978 act did not contemplate bringing those conversations, those communications within the ambit of FISA.

In the intervening years, we've had a revolution in technology by which most local communication now is by wireless and international communication basically comes by wire. And the fact of the matter is the nodes or the centers or the switching places, whatever you want to call it, not technical terms, happen to be, most of them, in the United States. And so suddenly the interpretation of FISA, now looking at the connection where you would try and somehow be able to capture this conversation that really was of someone overseas and not American, now, because it transited somehow the U.S., an interpretation by the FISA court was that a warrant was now needed.

Now, why would this present a problem for our intelligence community? Admiral McConnell, the former head of the National Security Agency, NSA, under President Clinton and now the current Director of National Intelligence, explained this to our Judiciary Committee. It takes about 200 man-hours to prepare a request for a court order in the FISA court for just one telephone number; 200 man-hours. As he explained to the judiciary in the other body, intelligence community agencies were required to make a showing of probable cause in order to target for surveillance the communications of a foreign intelligence target located overseas; then, they need to explain the probable cause finding in documentation and obtain approval of the FISA court to collect against a foreign terrorist located in a foreign country.

Frequently, although not always, that person's communications were with another foreign person located overseas. In such cases, prior to the Protect America Act, that's the act that we passed before we left in August, which I might add is not going to be allowed to be considered on the floor, at least the Rules Committee told us earlier today they would allow no amendments, the FISA's requirement to obtain a court order based on a showing of probable cause slowed, and in some cases, prevented altogether the government's ability to collect foreign intelligence information out serving any substantial privacy or civil liberties interests.

Again, as the legislative history of the 1978 FISA Act made clear, it was never the intention of the act to cover surveillance of non-U.S. persons overseas so long as the U.S. person located in the United States was not the real target of the surveillance. Yet prior to the enactment of the bill that we passed in August, which has a sunset in February of next year, that's the reason we have to consider it this week, our intelligence community was saddled with the requirement that they devote substantial resources for the preparation of applications required to be submitted to the FISA court.

□ 2015

As an economist might say, this substantial diversion of resources imposed opportunity costs measured in terms of the intelligence analysis which was not done because of the need to complete paperwork in order to surveil foreign intelligence assets outside the U.S. who were never intended to be covered by the old law. In other words, you had to take the analysts off the job of looking at current communications that might protect us against attacks in the United States or elsewhere by those who want to kill Americans, who have said, by the way, that they would be justified in killing 4 million Americans, 2 million of whom would be women and children. We take them off that pursuit and instead put them on this job of doing the intellectual work that would allow for the paperwork to be presented to the FISA Court.

Furthermore, in response to a question I posed to him, Admiral McConnell affirmed that prior to the Protect America Act, again, the act we passed just before we left in August, the intelligence community attempted to work under the laws interpreted by the court but found that as a result of working under those restrictions, his agency was prohibited from successfully targeting foreign conversations that otherwise would have been targeted for possible terrorist activity. Think of that: those kinds of conversations that we always were able to pick up before, before we ever had a FISA, after we had the 1978 FISA Act, we were not able to pick up anymore.

In fact, he said that prior to the enactment of the Protect America Act this past August, we were not collecting somewhere between one-half and two-thirds of the foreign intelligence information which would have been collected were it not for the recent legal interpretations of FISA requiring the government to obtain FISA warrants for overseas surveillance. To put it in graphic terms, we have put blinders on one of our two eyes as to the ability for us to look at those dots and connect those dots that the 9/11 Commission said we weren't finding and weren't connecting before 9/11.

The consequences of this for our Nation's security are very real. As Admiral McConnell explained to our committee: ''In the debate over the summer and since, I heard from individuals from both inside and outside the government assert that threats to our Nation do not justify this authority. Indeed, I have been accused of exaggerating the threats that face our Nation,'' said Admiral McConnell.

He continued: ''Allow me to attempt to dispel this notion. The threats that we face are real and they are indeed serious. In July of this year, we released a National Intelligence Estimate, commonly referred to as an NIE, on the terrorist threat to the homeland. In short, these assessments conclude the following: the United States will face a persistent and evolving terrorist threat over the next 3 years.'' Why 3 years? That is the total time of the NIE. They are not saying it will only just be 3 years, but in the time frame that they were supposed to assess, this threat will continue.

They say that the main threat comes from Islamic terrorist groups and cells, especially al Qaeda. Al Qaeda continues to coordinate with regional terrorist groups such as al Qaeda in Iraq, across North Africa and other regions.

Al Qaeda will likely continue to focus on prominent political, economic, and infrastructure targets with a goal of producing mass casualties. Mass casualties. That means thousands, if not millions, of Americans if they were successful. Visually dramatic destruction, significant economic aftershock and fear among the

U.S. population. These terrorists are weapons proficient. They are innovative and they are persistent. Al Qaeda will continue to seek to acquire chemical, biological, radiological and nuclear material for attack; and they will use them given the opportunity. This is the threat we face today and one that our intelligence community is challenged to counter. So says Admiral McConnell.

This is the real issue, the 800-pound gorilla in the room, if you will, which remains the central question before us: How do we best protect America and the American people from another cataclysmic event? I do not believe it is good enough for us to say we are preparing to respond to an attack. I believe what we need to do is to prepare to prevent such an attack.

As I have suggested before, when you assess the risk which allows us a proper assessment to be able to determine how we best array our resources against such an attack, we need to have threat, plus vulnerability, plus consequence. And the only way you can assess threat is by having proper intelligence.

As the National Security Estimate makes clear, those who seek to kill us continue in their resolve to, once again, inflict mass casualties upon our Nation. The threat is still there. Although we have been successful in thwarting another attack since 9/11, there are no guarantees in this business. In fact, if you would look at the polls that I've seen most recently, you will find that something like 70 percent of the American people, in fact I believe it is 73 percent of the American people in the latest poll I saw, believe that we, that the U.S. Government, has been effective in forestalling a terrorist attack on our shores. However, 57 percent believe that we are less safe. So you put those two things together, you try and figure out what the American people are saying. I think what we are saying is they believe that many of the things that we have done in government with the support of the American people and the funding of the American people have been successful in forestalling a terrorist attack on American shores, but they know that al Qaeda and their affiliates and associates have not been deterred to the extent that they are still trying to do us harm.

So they see a continuing problem, and they expect us to see the continuing problem and bring us the efforts necessary to protect against a successful attack as seen from the other side.

Independent sources such as Brian Jenkins in the RAND Corporation have stressed that intelligence capability is a key element in our effort to protect our homeland. He states this: ''In the terror attacks since 9/11, we have seen combinations of local conspiracies inspired by, assisted by, and guided by al Qaeda's central leadership. It is essential that while protecting the basic rights of American citizens, we find ways to facilitate the collection and exchange of intelligence across national and bureaucratic borders.''

In this regard, Admiral McConnell came before us last August asking for changes in the 1978 FISA Act. When you think about it, a definition of ''electronic surveillance'' constructed almost 28 years ago certainly could not have kept pace with changes in technology. Ironically, as I said, when FISA was first enacted, almost all international communications were wireless. The cell phone did not even exist. Although the revolution in telecommunications technology has improved the quality of all of our lives, it has taken a quantum leap beyond the law.

When FISA was passed in 1978, almost all local calls were on a wire and almost all international calls were wireless. However, now the situation is upside down. International communications which would have been wireless 29 years ago are now transmitted by wire. While wireless radio and satellite communications were excluded from FISA's coverage in 1978, certain wire or fiber optic transmissions fell under the definition of electronic surveillance. Thus, changes in technology have brought communications within the scope of FISA which Congress never intended to cover in 1978.

Similarly, the rise of a global telecommunications network rendered irrelevant the premium placed on geographic location by the 1978 act. As Admiral McConnell explained to our committee, it is the Judiciary Committee, in the old days location was much easier. Today, with mobile communications, it is much more difficult.

So a target can move around. So the evolution of communications over time has made it much more difficult. So what we were attempting to do is get us back to 1978 so we could do our business and legitimately target foreign targets and keep track of threats and respect the privacy rights of Americans. Because a cell phone, he continued, for example, with a foreign number, GSM system, theoretically could come into the United States and you wouldn't appreciate it had changed. So you would have to now work that problem, and if you did then determine that it was in the United States and you had a legitimate foreign intelligence interest, at that point, you have to get a warrant.

It was with this backdrop that we enacted the Protect America Act this past August. According to Admiral McConnell, this act has provided us with the tools to close our gaps in our foreign intelligence collection. Think of that. That is what the 9/11 Commission asked us to do, close those gaps. He found those gaps that were at least as wide and even wider following the decision by the FISA Court earlier this year. He said, and says, that the bill we passed in August has closed those gaps.

He described five pillars in the important new law. First, it clarified the definition of electronic surveillance under FISA that it would not be interpreted to include surveillance directed at a person reasonably believed to be located outside the U.S. Under the law, it is not required for our intelligence community to obtain a FISA warrant when the subject of the surveillance is a foreign intelligence target located outside the U.S. This important element of the law is entirely consistent with the legislative history of the 1978 act. As I previously mentioned, it was not intended to reach foreign intelligence outside the U.S.

The second pillar of the act we passed in August establishes a role for the FISA Court in determining that the procedures used by the intelligence community are reasonable in terms of their capacity to determine that surveillance target is outside the U.S. The third pillar of the act provides the Attorney General and the Director of National Intelligence with the authority to direct communications providers to provide information, facilities and assistance necessary to obtain other information when targeting foreign intelligence targets outside the U.S.

The corollary of this obligation to provide intelligence information is the fourth pillar which establishes liability protection for private parties who assist the intelligence community when complying with a lawful direction under the law.

Finally, the law continues the requirement that the intelligence community must obtain a court order to conduct electronic surveillance or a physical search when the targeted person is located in the U.S.

Admiral McConnell defined the concept of the gap to be closed to mean foreign intelligence information that we should have been collecting. I am sure that most Americans would agree with the admiral that in a world with weapons of mass destruction there is no room for gaps in our intelligence capacity. Let me repeat: this is the considered judgment of a career officer in the U.S. Navy who headed the National Security Agency under President Clinton for 4 years and who now serves as the Director of National Intelligence. It is his considered judgment that the changes we made in the law in August were necessary.

Although it was scheduled to sunset 180 days after enactment on February 5, the ink was hardly dry before the left-wing blogosphere was going bananas. Now, don't get my wrong. I defend the right of any American to scrutinize and seek a different course concerning our national security policy. However, based on Admiral McConnell's service to his country to Democrat and Republican administrations, I would suggest that those who seek substantive changes in what he has told us to be necessary should face a heavy burden of proof. In fact, in his appearance before the Judiciary Committee while reserving the right to see the fine print, he indicated he himself was open

to discussions concerning changes in the end.

I would also make the observation that it is time for all of us to agree that this is not about President Bush. Whether you hate him or love him or don't have any feelings about him at all, that is not the issue here. We are talking about the security of our Nation, the safety of our people, the men, women, children, grandchildren we encounter in our districts at Little League games, Girl Scout meetings, and our town halls. Those who send us here to represent them are depending on us to protect their lives and the lives of their children. This is the context within which we must consider this ultimate matter of our responsibility.

While the law we passed in August, the Protect America Act, represents a major step forward in protecting the American people, there remain elements of the larger package unveiled by Admiral McConnell and General Hayden which should receive our prompt attention.

First and foremost, it is imperative for this body to extend liability protection to companies who responded to the entreaties of their government since the 9/11 attacks. That is why I am so disappointed when I appeared before the Rules Committee earlier today and we were told, as we walked in, as anybody walked in with an amendment, We will listen to you, but we have already decided it is going to be a closed rule. One of the amendments offered would have given this liability protection. At a time when our country was in peril, these companies responded to the call for help. In an earlier era, maybe in a simpler time, this might have been described as patriotism. But now, instead of kudos, what do they get? They receive a summons and a complaint. They were met by costly litigation because of their willingness to respond to our country in a time of need.

When we brought the issue up in our Judiciary Committee, one of the members on the other side of the aisle said, Well, these companies have millions dollars' worth of lawyers so they can defend themselves. Boy, that is the way we ought to do things. We are going to fight the war on terror with summonses and warrants.

□ 2030

We are going to sue them out of existence. Oh, I'm sorry. We are not suing the terrorists; we are suing the companies who helped us respond to the terrorists. Figure that one out.

Mr. Speaker, I would go so far as to suggest that regardless of what you think of the war in Iraq, regardless of what you may think of the war on terror, this violates all notions of fundamental fairness. It sends the worst possible message, not only to companies, but to the American public itself, that those who would come to the aid of their country are fools, and it is those on such an ideological crusade seeking to protect this Nation through lawsuits that are somehow the true American heroes. Rosy the Riveter of World War II fame has been replaced by lawyers in three-piece suits.

Some of you may be old enough to remember the standard text used in our typing classes. We would practice over and over again. Boy, I recall this, typing out the following sentence: Now is the time for all good men to come to the aid of their country. Of course it would have been better stated that: Now is the time for all good men and women to come to the aid of their country.

This was an ethos which went unchallenged. Believe me, in typing classes it wasn't a Republican idea, it wasn't a Democratic idea, it was an American idea, so noncontroversial, that it was standard text: Now is the time for all good men and women to come to the aid of their country.

Mr. Speaker, we must not send a message to our companies and the American people that if you respond to your government when our fellow citizens are threatened by a cataclysmic attack that the very government which sought your help will not be there for you when the ideologues come after you with lawsuits.

Even if you hate this President so much you can't see him to succeed in anything, at least consider the possibility that there will be a war down the line that you may support. Furthermore, those who drive around with 1/20/09 bumper stickers need to consider the fact that maybe, possibly there could be a new occupant in the White House more to their liking. He or she is going to need all the help that he or she can get.

Mr. Speaker, the war on terror is not going to end with the term of the current President. The new administration is going to need to call on the help of all Americans, including companies like those whose only offense was to respond to the tragedy of 9/11. By what? Serving their government.

Consider the additional downside of using litigation as an ideological weapon. As anyone who picks up the daily newspaper knows, there is always a story concerning the latest lawsuits. The litigation system can produce leaks of the most sensitive information. It is not the dissemination of information to the public which is even our principal concern. Rather, potential leaks of sensitive information to terrorists will better equip them with the ability to maneuver in the plan which they are committed to doing, killing innocent Americans.

Unfortunately, H.R. 3773, to be considered on this floor, the so-called RESTORE Act that we passed out of Judiciary Committee last week and passed out of the Intelligence Committee, and which is scheduled for floor action as early as tomorrow, fails to address this issue. It does nothing, zero, provides no protection for the companies who came to the aid of our Nation after 9/11. As a matter of fact, if you listen to what happened in the Rules Committee, if you heard the debate in the Judiciary Committee, I presume if you heard the debate in the Intelligence Committee, you would not consider these companies to be something valuable in the defense of our Nation. They are suspect. They are questioned. They are, in essence, patsies, if you really look at this.

Mr. Speaker, the Protect America Act does not contain retroactive liability protection; not because we didn't believe in it, but because Admiral McConnell agreed to delay discussion on the agreement in order to reach an agreement on the law we passed in August to enable us to close the critical gaps in our Nation's intelligence-gathering ability prior to the August break. Since by its own terms that law was to expire February 5, this was an issue to be resolved at this time.

Unfortunately, the RESTORE Act resolves it by ignoring it. It is, therefore, essential for this body to take the necessary action to ensure that those who responded to the call for help after 9/11 will not be fed to the litigators.

Mr. Speaker, I would be pleased to yield to my friend from New Mexico (Mrs. WILSON), a member of the Intelligence Committee, a former member of our military forces, and someone who has been probably the most articulate in explaining the need for the changes in the law that we passed in August and for making that permanent as we go forward.

Mrs. WILSON of New Mexico. Mr. Speaker, I thank my colleague from California. I very much appreciate his hosting this Special Order this evening.

Mr. Speaker, before the August break we fixed a problem. It was a problem that grew worse over the course of this year in that we were increasingly hampered in our ability to prevent another terrorist attack on this country because of the change in telecommunications and a law that was woefully outdated.

It's called the Foreign Intelligence Surveillance Act. It was put in place in 1978 to protect the civil liberties of Americans. Think about it. 1978 was the year that I graduated from high school. The telephone hung on the wall in the kitchen. Cell phones had not been invented. The word ''Internet'' did not even exist. Technology has changed since 1978, and the law had not kept pace.

In 1978, almost all long-haul communications went over the air. Almost all international communications went over the air, and they were explicitly exempted from the provisions of the Foreign Intelligence Surveillance Act. Our intelligence community folks would go ahead and collect those communications if they had foreign intelligence value. They minimized or suppressed any involvement of Americans who were innocent and just happened to be referred to in a conversation or

something. But there were no restrictions on foreign intelligence collection.

Mr. Speaker, unfortunately, technology has now changed, and what used to be over the air is now almost all on a wire. The courts have found that under the old Foreign Intelligence Surveillance Act, before we changed it in August of this year, that if you touched a wire in the United States, even if you were targeting a foreign terrorist talking to another foreign terrorist who had no connection to the United States at all, then you needed a warrant. This began very rapidly to cripple our intelligence capability with respect to terrorism in particular.

The Director for National Intelligence, Admiral McConnell, has testified in open session that without the changes, without keeping the changes, making them permanent, that we put in place in August, we will lose between one-half and two-thirds of our intelligence collection on terrorism. Think about this for a second.

Now we all remember where we were on the morning of September 11, remember who we were with, what we were wearing, what we had for breakfast. Most Americans don't remember where they were when the British Government arrested 16 people who were within 48 hours of walking onto airliners at Heathrow Airport and blowing them up simultaneously over the Atlantic. They don't remember it because it didn't happen.

The American people want us to prevent the next terrorist attack. They don't want to have to remember where they were when a preventable disaster happened. That is what intelligence gives us, and that is why the Protect America Act is so important and why we have to make it permanent.

Sadly, the Democratic majority is going to bring a bill to the House this week which will gut the progress that we made in early August. They say things in this bill that, on its face, initially you think, well, that makes sense. One of them is you would not need a warrant for any foreign-to-foreign communication.

Well, doesn't that solve the problem? Wait a second. If Mr. LUNGREN, my colleague from California, was a foreign terrorist, just for the purposes of discussion, how do I know who he is going to call next? I don't. And if the law says that it is a felony to listen to the conversation of someone who is a foreigner calling into the United States, that means as soon as I collect that conversation, as soon as that terrorist makes a phone call into the United States, I become a felon. As a result, you have to have warrants on everyone.

It doesn't relieve the system of this huge legal bureaucracy. It means they have to get warrants on every foreigner in foreign countries, even if they are only talking to foreigners, because they might some day pick up the phone and call an American. And, oh, by the way, that is the conversation we want to be listening to. If we have a terrorist affiliated with al Qaeda calling into the United States, you bet we should be on that conversation. We should be all over that like white on rice. We shouldn't be waiting to get a warrant from a judge in Washington, D.C.

But it gets worse than that. They also put in this bill some things called blanket warrants.

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, reclaiming my time, I have referred to that section, that first section where they say you don't need it if it is foreign-to-foreign as the ''furtive fig leaf'' section of the bill, which appears to give Admiral McConnell what he needs, but because of the actual practicality of it, denies him the opportunity to do it, because essentially that was sort of the state of the law prior to the time we passed the law in August, and he told us it doesn't work.

Mrs. WILSON of New Mexico. If the gentleman would yield further, that is exactly right. There is already a provision in the law and was in 1978 that if it was foreign-to-foreign communication, you didn't need a warrant.

There are some circumstances where you are tapping into a line that is between a command headquarters of the former Soviet Army and one of their missile silos where it is a dedicated line. But modern telecommunications don't operate that way, and the terrorists who are trying to kill us are using modern commercial telecommunications. They are not using dedicated lines between headquarters. They don't even have headquarters.

Mr. DANIEL E. LUNGREN of California. If the gentlewoman would allow me to reclaim my time for a moment, evidently some on the other side of the aisle have listened to a little bit of our complaint here, so in the manager's amendment they have included what they consider to be the saving piece of that first section, which says if the electronic surveillance referred to in paragraph 1 inadvertently collects a communication in which at least one party to the communication is located inside the U.S. or is a United States person, the contents of such communication shall be handled in accordance with minimization procedures adopted by the Attorney General.

If that is all they did, that would be fine with me. But they then go on to say this, that require that no contents of any communication to which the United States person is a party shall be disclosed, disseminated or used for any purpose or retained for longer than 7 days, unless you get a court order or unless the Attorney General determines specifically in this case that the information indicates a threat of death or serious bodily harm to any person.

Now, Admiral McConnell has suggested to us that time frame, they say you can't keep it longer than 7 days, may not be practical within the contours of how we actually get that information, number one; and, secondly, you can't use that information. You can't give it to anybody. You can't disclose it to the FBI, even though the information doesn't make the person in the United States a target, the information contained in that conversation is all about Osama bin Laden calling into the United States and something he says that is important for our purposes. That is the extraordinary thing here, because it says no contents of any communication to which the United States person is a party shall be disclosed, disseminated or used.

It is exactly contrary to what Admiral McConnell said, which is the law should be directed at the identity of the individual we are targeting. So in this case, because you now capture a conversation that has taken place with the foreign person in a foreign land into the United States, even though it doesn't give rise to anything that would make a target of that person in the United States, you can't use any of that conversation with respect to the target for which you don't need a warrant, even though that person could be Osama bin Laden or one of his top people.

That is nuts. With all due respect, I use the word ''nuts,'' but I think that is probably proper.

Mrs. WILSON of New Mexico. Let's just think of an example here. Let's say Osama bin Laden or one of his chief lieutenants did call into the United States to a completely innocent person, a completely innocent person under this law which the Democrats are going to try to pass this week, and what he says in that conversation is ''Don't go to the Sears Tower tomorrow. Stay away from the Sears Tower tomorrow.'' Whoever in the intelligence community gets that communication is barred by law from giving it to anyone who can take any action to prevent a terrorist attack on this country.

Mr. DANIEL E. LUNGREN of California. Unless they go to court and get an order, which requires all of the necessary preparation that Admiral McConnell has told us we cannot do.

Mrs. WILSON of New Mexico. You may not even know who the person is being called, other than it is an area code and number in the United States, which means you don't have any probable cause. You have to send the FBI out and find out whose number that is and whether they are reasonably believed to be involved in a crime.

□ 2045

But the threat is immediate. We cannot have our intelligence agencies tied up in legal redtape when they are the first line of defense for this country in the war on terrorism.

I am appalled that we have people in this body who put forward legislation who seem to be more concerned about protecting the civil liberties of terrorists overseas than they are about protecting Americans here at home and preventing the next terrorist attack.

This would be an unprecedented extension of judicial oversight into foreign intelligence operations. We don't even do this in criminal cases, and my colleague is much more experienced in criminal law than I am. But if we are listening to a Mafia kingpin and he happens to call his son's second grade teacher.

Mr. DANIEL E. LUNGREN of California. Or his sainted mother or his brother, the priest.

Mrs. WILSON of New Mexico. Anybody. And we are not prevented from using that information until we get a warrant on the priest or his mother or his son's second grade teacher. The target is the Mafia kingpin.

This legislation will tie our intelligence community in knots in order to protect the civil liberties of terrorists in foreign countries who are trying to kill Americans.

There are some in this body who may believe we shouldn't have intelligence services. I believe it was Hoover who said that gentlemen shouldn't read each other's mail. Well, we are not dealing with gentlemen here. We are dealing with terrorists who are trying to kill Americans and are using commercial communications to talk to each other. We must do everything we can to prevent that terrorist attack, and that means listening to their conversations if we get an opportunity to do so.

Mr. DANIEL E. LUNGREN of California. I would like to pose this question to the gentlelady. The gentlelady has studied this issue for a long time and was one of the first people to raise certain points of considered alarm, trying to bring a sense of urgency to this House to respond to the threat that is out there.

There is another troubling aspect of the bill to be brought to the floor. It has a sunset of December 31, 2009. So that would suggest to anybody looking from the outside that there is an end game or an end date at which the threat no longer exists. Can the gentlelady give us any advice, considered opinion, as to whether or not this threat is long lasting? Or should we limit this law just to the next 2 years?

Mrs. WILSON of New Mexico. I don't think anybody believes that the threat of Islamic terrorism to the United States, or other foreign threats, are somehow going to go away in the next 18 months. That is just not going to happen. What is even worse about this bill, while they set up some system of blanket warrants with respect to some national security matters, they do not allow any so-called blanket warrants for things that are outside of direct threats to the United States, which is unprecedented in foreign intelligence collection.

That means if we are trying to listen to Hugo Chavez in Venezuela, or we are trying to figure out whether the leader of Sudan is about to launch another wave of genocide in Darfur, or we want to listen in to what the Chinese or the North Koreans are talking to each other about with respect to the Six-Party Talks and the potential for weapons of mass destruction on the Korean Peninsula, we are absolutely prohibited from listening to those conversations without a warrant from a court in the United States of America. The courts have never been involved in that way. Never in the history of this country, nor should they be. Foreign intelligence collection of foreigners in foreign countries has never been subject to warrants here in the United States.

Mr. DANIEL E. LUNGREN of California. Today I presented two amendments before the Rules Committee for consideration on this floor. Both were denied. One would have expanded the definition of foreign intelligence individuals or states to include nonstate actors who are involved in proliferation of weapons of mass destruction.

The reason I did that is al Qaeda is not a state. There are free actors out there who would attempt to work with nation states or with organizations such as al Qaeda; and technically under the definition currently in the FISA law, they are not covered so that we couldn't do these sorts of things you talk about, listening in on their conversations without warrants, even though they may be as much a threat as a small nation state somewhere. But yet we don't even have an opportunity to discuss that on the floor of the House because that amendment and every other amendment was denied.

Mrs. WILSON of New Mexico. There is historical precedent for this, one of a Pakistani who ran a criminal enterprise, an international network that was selling nuclear materials and the capability to build nuclear weapons to people and countries around the world. While he was Pakistani by nationality and had helped with the Pakistan Government's weapons program, there was no question that he wasn't acting as an agent of Pakistan, at least I don't think there was. He was running a criminal enterprise for money, and we should be able to listen in and track people like that.

Likewise, I think our foreign intelligence should be able to listen to narco-rings in Burma and be able to detect whether there are cocaine smugglers who are trying to ship drugs into the United States.

These are all foreigners who are doing things that we do not like that are not in our interests and our intelligence capabilities should be used to disrupt those things. This law would shut that down. Shut it down. And Admiral McConnell has been very clear on that.

Mr. DANIEL E. LUNGREN of California. Let us return to the protections of Americans.

In the criminal justice system for years and years and years, somewhere between 30 and 50 years, we have done minimization, which means that if you have a wiretap on a Mafia member, and as I say, he calls his sainted mother or his priest, and the conversation has nothing to do with Mafia activities, that is minimized. That is, it is taken out of the data field and thrown away, essentially. If he says something in that conversation, while not implicating the other person in the conversation that is of benefit to our investigation, that is, he comments he is going to be going to Nashville and that's an important piece of information for us to know, we can use that. If the receiver of the conversation or communication, by what he or she says, indicates activity of an illegal nature such that that person becomes a target, it is at that point we require a warrant for that person.

Similarly, the way the law that we passed in August works is once you have the legal nonwarrant wiretap, or whatever you want to call it, catch of or capture of the communication because the target is a foreigner in a foreign country and you have reason to believe they are involved in some way that is covered under the law, that conversation or communication to someone within the United States is treated in the very same way.

If the conversation has nothing to do with terror, it is minimized. It is thrown out. If the conversation contained some information about the legal target that is of benefit, we can use that information against that target. If in fact the response or the statement made by the person in the United States, the American, is of a nature that gives us cause to believe that person is involved in terror, we then go get a warrant because that person becomes a target. Is that the gentlelady's understanding of how we operate?

Mrs. WILSON of New Mexico. That is exactly how this law works. If the target is an American, you need a warrant. If the target is a foreigner, you don't need a warrant; foreigner in a foreign country.

I think one of the things that is important to remember here, something that has been the greatest accomplishment in the last 6 years in this country has been what has not happened. We have not had another terrorist attack on our soil. And it is not because they haven't tried.

Osama bin Laden and al-Zawahiri have been very clear: they want to kill millions of Americans, and they will do it if they can.

The question is whether we will use the tools at our disposal, entirely constitutional and legal tools, in order to prevent the next terrorist attack, to stop the attack on the USS *Cole*, to prevent the planes from taking off from Heathrow to kill thousands of innocent Americans. Intelligence is the first line of defense in the war on terrorism. It is possible to provide our intelligence community with the tools to keep us safe while protecting the civil liberties of Americans, and that is the perspective that the Democrat majority has lost.

When Admiral McConnell appeared before the Judiciary Committee, he wanted to make clear our understanding of the technology of the capture of conversations. And he put it this way: he said when you are conducting surveillance in the context of electronic surveillance, you can only target one end of the conversation. So you have no control over who that number might call or who they might receive a call from. He then went on to say if you require a warrant in circumstances that we have never required before, as is the implication of the bill to be brought before us, he said if you have to predetermine it is a foreign-to-foreign before you do it, it is impossible. That's the point. You can only target one. If you are going to target, you have to program some equipment to say I am going to look at number 1, 2, 3. So targeting in this sense, you are targeting a phone number that is foreign. So that's the target. The point is you have no control over who that target might call or who might call that target.

Is that consistent with your understanding in the years you have been on the Intelligence Committee and the years you have looked at this issue?

Mrs. WILSON of New Mexico. That is exactly right. The biggest problem is that the terrorists who are trying to attack us, and even foreign governments, are increasingly using commercial communications. So they don't have dedicated lines between a couple of government buildings. In modern communications, those communications will flow wherever it is fastest to get to wherever they are calling to. Sometimes that call will transit the United States, and we shouldn't require a warrant just because the point of access to that conversation happens to be within the United States.

Mr. DANIEL E. LUNGREN of California. I know we only have about 5 minutes left. This is testimony that Admiral McConnell gave before the Judiciary Committee. He was asked this directly by a Member from the other side of the aisle: How many Americans have been wire tapped without a court order?

The direct response by the DNI, none. He went on to say there are no wiretaps against Americans without a court order. None. What we are doing is we target a foreign person in a foreign country. If that foreign person calls in the United States, we have to do something with the call. The process is called minimization. It was the law in 1978. It is the way it is handled.

Is that your understanding?

Mrs. WILSON of New Mexico. That is my understanding, and he has testified to that in the Intelligence Committee as well. That is what gets lost here. People seem to think that somehow this impacts the civil liberties of Americans. No, this bill that the Democrats are bringing to the floor this week will extend civil liberties protections to foreigners trying to kill Americans. It will make it harder for our soldiers and our law enforcement folks and our intelligence community to find out when the next attack is coming in order to prevent it.

I don't understand why they are going in this direction. Sometimes I don't think they really understand what they are doing here. Sometimes I think it is not entirely intentional on the part of some of these folks, that they really do not understand how this works and how badly they are crippling American intelligence if they pass this law.

Mr. DANIEL E. LUNGREN of California. We should recall the words of the United States Supreme Court in the Keith case which is the case that dealt with wiretaps in the United States. They said that while there was no warrant exception in domestic surveillance cases, it was not addressing the question of activities related to foreign powers and their agents. And in that unanimous opinion, the court noted that were the government to fail ''to preserve the security of its people, society itself could become so disordered that all rights and liberties would be endangered.''

Justice White, a John Kennedy appointment to the Court who personified the definition of a moderate, said this in his concurring opinion in the Katz v. U.S. case: ''We should not require the warrant procedure in a magistrate's judgment if the President of the United States or his chief legal officer, the Attorney General, has considered the requirements of national security and authorized electronic surveillance as reasonable.''

In other words, the court when it dealt with this issue those years ago recognized the difference between a criminal justice system and a system of intelligence and counterterrorism to protect our country from attack by those who would basically destroy everything, including our Constitution and our constitutional foundation.

Mrs. WILSON of New Mexico. If you think about how the challenge has changed since the Cold War, in the Cold War, we had early warning systems. We had Cheyenne Mountain that was watching early warning systems to see if Soviet bombers were heading towards us or missile systems had launched, immediately scrambling airplanes and taking immediate action to protect this country.

□ 2100

And we had intelligence systems set up to be able to detect and give us that early warning. The problem has changed, but the need for early warning is still there.

Now, what we didn't do when we got a detection that bombers were coming towards the United States was call the lawyers in Washington to see if we could launch our airplanes to protect us. The system was set up to be fast and immediately responsive.

What the Democrats are going to do this week is to say if you get a detection, if you believe you have early warning, that the terrorists are coming to destroy Americans or attack Americans, put that on hold while you go get a warrant, talk to judges, take hours to decide whether we can respond. That will not allow us to protect America.

Mr. DANIEL E. LUNGREN of California. The gentlelady is exactly correct, and let me suggest, to get down to basics, that when surveillance is directed overseas, legitimate concerns relating to purely domestic surveillance are not implicated. We should all be concerned about the protections of civil liberties, as the 9/11 Commission put it.

The choice between security and liberty is a false choice as nothing is more likely to endanger America's liberties than the success of a terrorist attack at home.

And I thank the gentlelady for her comments.

Mrs. WILSON of New Mexico. I thank the gentleman for having this hour tonight.

## TRUCKS COMING IN FROM MEXICO

The SPEAKER pro tempore (Mr. MURPHY of Connecticut). Under the Speaker's announced policy of January 18, 2007, the gentlewoman from Kansas (Mrs. BOYDA) is recognized for 60 minutes as the designee of the majority leader.

Mrs. BOYDA of Kansas. Mr. Speaker, tonight I rise to speak on behalf of so many in the 2nd District of Kansas who are as concerned as I am about what's happening with the trucks coming in from Mexico.

I have stood strong and said from the beginning what on Earth are we doing here. We have a rule of law in this country, and some way or another it is once again being completely disregarded, the will of the American people, the rule of law, and I stand before you here tonight to say the people of the 2nd District want me to say something, and that is, enough is enough.

My Safe American Roads Act basically said this pilot program is not going to keep our families safe. It, in fact, will make our highways more dangerous, and asks the President, please, Mr. President, stop this program now.

We had a bill that was voted on this very floor right here, 411–3, virtually unanimously, and yet on Labor Day weekend, just a stunning, a stunning reversal of what the American people had asked our President, on Labor Day weekend it was announced that these trucks coming up from Mexico would be allowed that weekend, and in fact, the first trucks started to roll.

Tonight we want to talk about what's going on and why we are so concerned, and I'm joined here with my friend and colleague Mr. RYAN from Ohio, and I will just turn it over to you for a few minutes.

Mr. RYAN of Ohio. Mr. Speaker, I appreciate that, and I appreciate all your