

think are worth making concerning the Protect America Act, which we hope to make permanent in the bill that's come over here from the Senate to fix the Foreign Intelligence Surveillance Act.

□ 2200

But one of the points that hasn't been made is that the Senate bill that has passed, that's pending on this floor, actually has stronger civil liberties protections for Americans than in the original 1978 law. In fact, Admiral McConnell and Attorney General Mukasey said in a letter on the 22nd of February, "We note that the privacy protections for Americans in the Senate bill exceed the protections contained in both the Protect America Act and the House bill."

So, in fact, one of the things that has changed under this new piece of Senate legislation is that if you are an American, wherever you are in the world, if you're known to be an American, you have the protections of the American Constitution. That's not the case under the 1978 FISA law. So, there is actually more civil liberties protections for Americans on the bill that is on the floor of the House than there is under existing statute.

And the second thing that I think is worth pointing out is that after 9/11 the President turned to his advisers and everyone in all the intelligence agencies and said, you know, what tools do we have? How can we prevent another terrorist attack? How can we find out what their plans and capabilities and intentions are? The fact is that the terrorist threat is much different than the threat that we faced in the height of the Cold War. I was an Air Force officer in Europe during the Cold War. And the Soviets were a very convenient enemy from an intelligence point of view. They had a very big footprint. We knew where they were. We knew what they had. They had exercises the same time every year out of the same barracks using the same radio frequencies. They would have been very difficult to defeat, but we knew where they were.

With the terrorist threat, the problem is completely reversed. If we can find them, we can stop them. The problem is finding them. And, in general, they are using commercial communications. So, instead of being one ugly monster in the forest where you know where they are like the Soviets were, it's more like a "Where's Waldo" problem. Can you find the person in the clutter of everything else? That puts the premium on good intelligence.

And particularly, in the case of terrorism, electronic surveillance has been one of our most important tools because they are hiding and using commercial communications. That has been one of our strongest tools in preventing terrorist attacks for the last 6 years. And I must say that I believe that the greatest accomplishment of the last 6½ years has been what has not happened. We have not had another

terrorist attack on our soil since the morning of 9/11. And they have tried. It has been good intelligence that has kept this country safe. And for the last 18 days, we have been building another intelligence gap, and this body must act to close it.

Mr. MCCAUL of Texas. I thank the gentlelady for her eloquence, as always.

I would like to just add that, certainly during the Cold War at least, the principle of mutually shared destruction applied; we valued our lives and so did the Soviets. In this war against terrorism, in the day of suicide bombers, we can't say that. So real-time intelligence is absolutely critical to protecting the Nation.

I want to state again, from the DNI, the Director of National Intelligence, he says, "Expiration of this act will result in a degradation of critical tools necessary to carry out our national security mission. And without these authorities, there is significant doubt surrounding the future aspects of our operations." Again, that is a warning to the United States Congress that if you don't do your job, I can't do my job. Do your job.

With that, I yield to the gentleman from Pennsylvania.

Mr. DENT. Mr. Speaker, I want to thank the gentleman from Texas and the gentlelady from New Mexico and the gentleman from Georgia for engaging in this colloquy tonight.

I think just about everything has been said. We have a job to do. The American people expect us to get it done. We've heard from the attorney generals, we've heard from the U.S. Attorney General, Michael Mukasey. We've heard from the Director of National Intelligence, Michael McConnell. We have heard from everyone. And the fact that this intelligence product is being degraded should be alarming to every single American. The fact that we're debating this this evening, knowing that we may not be getting vital intelligence or information I think should be cause for alarm.

There are going to be those who say that we're doing this fear-mongering. That is absolute nonsense. We're simply stating facts. And the facts are that our intelligence personnel today don't have the tools that they had just a few weeks ago to deal with the threats that we face as a Nation.

With that, I want to thank you again for your leadership. As a member of the Homeland Security Committee, you and I are deeply engaged in these issues, along with Mrs. WILSON, who has been a great leader on the House Permanent Select Committee on Intelligence. Again, we need to keep pounding this point home. I am prepared to come to the floor of the House every single night until this law is enacted.

With that, I yield back to the gentleman from Texas.

Mr. MCCAUL of Texas. Thank you, Mr. DENT, for your leadership as well. I see we just have a few minutes left.

I yield 2 minutes to the gentlelady from New Mexico.

Mrs. WILSON of New Mexico. I want to thank the gentleman from Texas, and I won't take the 2 minutes, but I wanted to thank him for his leadership and persistence. This is going to get fixed because we will not rest until it's fixed, and it is critical to the country that it be fixed.

It is now up to the liberal Democrat leadership to listen to the will of this body and pass the Senate bill that will close the intelligence gap.

I yield back to my colleague.

Mr. MCCAUL of Texas. I thank the gentlelady.

I would like to close with a quote. Why is this debate so important? I think it's important to understand the threat and to understand who the enemy really is. Who is the enemy? Let's get inside the mind of the enemy. And our enemy says, "The confrontation that we are calling for with the apostate regimes does not know Socratic debates, Platonic ideals, nor Aristotle diplomacy. But it knows the dialogue of bullets, the ideals of assassination, bombing and destruction, and the diplomacy of the cannon and machine gun. Islamic governments have never and will never be established through peaceful solutions and cooperative councils. They are established as they always have been, by pen and gun, by word and bullet, and by tongue and teeth."

The words I just read to you are the preface of the al Qaeda training manual. That is how it begins. That's in their words, not mine. That is the enemy. That is the threat. That is why it's so important we pass the Protect America Act on the House floor, and pass it now.

DEMOCRATIC FRESHMEN HOUR

The SPEAKER pro tempore (Mr. BRALEY of Iowa). Under the Speaker's announced policy of January 18, 2007, the gentleman from Kentucky (Mr. YARMUTH) is recognized for 60 minutes.

Mr. YARMUTH. Mr. Speaker, it's a great honor for me to be here tonight representing the class of 2006, the freshmen Democrats who were responsible for returning the majority to the Democrats in the last election. I'm particularly proud to be here to talk about the whole area of intelligence and surveillance, which our colleagues from across the aisle spent the last hour talking about.

I don't have props tonight because I look down at the dais and I see engraved in the side of the dais two words that serve as the only props I need in discussing this very important topic. I see the word "justice," and I see the word "freedom." Because that's really what we're talking about when we're talking about the FISA controversy. We're talking about whether the incredibly important principles of justice will apply to the way we treat corporations in this country that choose not to

obey the law. And we're also talking about freedom. We're talking about the freedom of individuals to pursue their private lives free of the worry that they're being listened to for no good reason.

You know, it's interesting to listen to my colleagues from across the aisle. And I don't want to impugn their motives at all. I believe that they, just as we on the majority side of the aisle, firmly believe in patriotism. We firmly believe in securing this country. We believe this is one of our sworn duties.

There is no question that all of us take an oath to secure this country and to protect it, and one of our primary responsibilities is to defend the people of this great country. But the first thing that we swear to when we take the oath of office is to protect the Constitution of the United States. That is our solemn oath. And the Constitution was written primarily to protect the rights of the American citizens. And that's really what this controversy is all about. All of us, every one of us, Democrat and Republican, is primarily concerned about making sure that our citizens are safe. And we want to do everything in our power to make sure that we use every tool that we have at our disposal to make sure that our citizens are safe. But we also want to make sure that every tool in our power is not used to violate the Bill of Rights, the amendments which guarantee fundamental freedoms to our citizens. And that's really what we're talking about when we talk about the FISA reauthorization.

You know, it's interesting; we passed, last fall, a reauthorization of the FISA Act, the Protect America Act, and we passed it willingly. We thought it was a good bill. And here comes the President saying, I'm not going to allow this bill to go forward. I'm not going to allow these important protections for the American citizens to go forward unless we give immunity to the phone companies because the phone companies did what we ordered them to do, essentially, starting with 9/11. We asked them to help us provide surveillance of American citizens even though we knew it was against the law, even though they knew it was against the law. We asked them to do that, and, therefore, they shouldn't be held accountable for that.

Well, that's an interesting attitude. And I know that my colleagues across the aisle said all they're trying to do is to protect the trial lawyers, all they're trying to do is protect the trial lawyers. Well, I have another question because there is another side to that point. And I'll address the trial lawyer controversy, or issue, but the other side of that is, why are they trying to protect the phone companies? Why are they trying to protect American corporations that knowingly violated the law of the United States?

Now I don't think that it's really because they care whether the phone companies have to pay millions of dol-

lars in damages. I don't think it's really because they care whether trial lawyers might make a contingent fee. I think the only reason that they are concerned about granting immunity to the phone companies for ostensibly violating the law of the United States is because they don't want the American people to know what the phone companies were doing and what the administration has ordered them to do because in a legal procedure, a lot of that information may come out.

Now they will say, on the other hand, if they get to that, well, this is a matter of national security. And all the legal experts say no, the courts have a way of making sure that no classified information is divulged to the public. But what the administration is really afraid of is not that AT&T might have to pay \$100 million. They're concerned about AT&T having to go under oath and say here's what we did, and that somebody will understand that this administration asked them to violate the law, and they knowingly did that. That's what the immunity issue is all about.

Now in terms of the trial lawyers. I know, and I know our leadership has told us, the trial lawyers have never said a word about this issue. This isn't a big deal. You're not talking about a vast number of lawyers who are going to benefit from this. There are only a few companies that did it. As a matter of fact, there are a couple of companies that were reputable enough and honest enough to say no to the government, we're not going to do that, we're not going to violate the law.

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So they didn't need immunity because they didn't do anything wrong, and I don't know how many lawyers could actually, and I don't want to use the metaphor I was thinking of, but try to exploit that situation for their benefit, but there are not that many involved. And trial lawyers really have not lobbied this issue at all.

What we are talking about, plain and simple, is the issue of who violated the law. Is there accountability? Is there justice in this country? And this administration, in spite of their protestations of saying Osama bin Laden is out there, he's making phone calls, they're all making phone calls, that that's what we want to protect ourselves from, that has nothing to do with the immunity issue. The immunity issue is history. That's the past. We're concerned about what we do going forward. We're concerned about protecting the American people. We enacted legislation last fall that would do that. The President won't sign it.

So we have a very, very different perspective on this issue. And it's funny because they throw up their hands on the other side and say, I just can't imagine why the leadership of the Democrats is not allowing this to come to a vote, why they won't pass this bill. We need to do it. It's a perfect bill. We need to do it.

Well, I have three answers for them. I think I have already mentioned a couple of them. One is the Constitution. That's the solemn oath that we take when we enter this office. And we are not willing to pass a bill that basically eliminates part of the Constitution.

Secondly is the rule of law. I think we all agree that the rule of law is sacrosanct, that this country would fall if it weren't for the rule of law. And we are trying to make sure here that the rule of law is observed and respected.

And, finally, we're talking about individual liberty, the freedom I talked about at the outset of the remarks, that we need to make sure that if we allow individual liberties to be abridged in this country that it is done pursuant to legal authority, that it is done pursuant to warrants, that it is done pursuant to the government's going to a court and providing reasonable cause to assume that there is some reason to surveil an individual American citizen. That's what this dispute is all about. That's what this issue is on both sides.

And it's interesting. As I listened to the President not too long ago when he was once again trying to use scare tactics to intimidate this body into doing what he wants to do, to protecting him and to essentially helping him engage in a coverup of the activities of the administration and the phone companies, he made the statement that right now terrorists are plotting activities against the United States that would make 9/11 pale in comparison. That's what he said.

And when I heard him say that, my thought was, well, wait a minute. If he actually knows that, that they are plotting something that's worse than 9/11, then I guess he's getting all the information he needs. Somehow, some way he's hearing information. If he can make a claim with that specificity that it's going to be worse than 9/11 and they are planning it now, then maybe he's listening to something. Maybe the intelligence authority that he was using works and he doesn't need this additional authority.

But I don't think that's the case, of course. I think basically what he was trying to say is do this or you die because that's been the strategy of this administration in many cases. Do what we want or you will be in trouble. You will be harmed. Your family will be harmed.

I don't think the American people are buying it anymore. I think they've cried wolf far too often. But that's what we have been dealing with in trying to have a very reasonable approach to providing the type of authority that we agree is necessary to allow us to wage this struggle against terrorist activity. So that's sort of, in an introductory way, what we are dealing with.

And it gives me great pleasure now to welcome another Member of the class of 2006, my good friend, the gentleman from Wisconsin, Dr. KAGEN.

Mr. KAGEN. Thank you, Congressman YARMUTH. I really appreciate your words of wisdom and your counsel. And I would like to engage you in some conversation this evening.

Earlier this evening we heard our colleagues on the Republican side raise some interesting issues, and one of the questions that someone raised was, almost facetiously, I hope, "Where's Waldo?" If security, if international security depends upon finding anybody, it's not Waldo. We took our eye off the ball. Where is Osama bin Laden, and what are we doing about him and his violent extremists and the people that follow his way of thinking?

So, may I ask you a question? Congressman YARMUTH, is it really true that our intelligence community went dark? Are we no longer listening in on conversations? Is some of this fear mongering actually real? Is there any truth in there at all? Are we going dark? Are we not listening to people who want to do us harm?

Mr. YARMUTH. Well, I think the answer to anyone who thinks about it is obvious. No, of course we are listening. And what's more, we're listening pursuant to authority that exists in the law. And when the current law expired recently, the authority to surveil under the prior act did not expire. And, in fact, there have been numerous people who have said we have all the authority we need to protect this country.

Mr. KAGEN. But, sir, there have been telephone calls going out. There have been radio conversations. There have been television commercials in districts around America trying to indicate that, in fact, we have gone dark, that we've suddenly stopped listening. Are you telling me here tonight that that just isn't true?

Mr. YARMUTH. You don't have to take my word for it. Experts in the field have testified to the fact that this is not the case. Richard Clarke, who is the former Chief NSC Counterterrorism Adviser under both Presidents Clinton and George W. Bush said, "Let me be clear. Our ability to track and monitor terrorists overseas would not cease should the Protect America Act expire. If this were true, the President would not threaten to terminate any temporary extension with his veto pen. All surveillance currently occurring would continue even after legislative provisions lapsed because authorizations issued under the act are under effect up to a full year."

So, of course, there is no reason to believe the ads and the scare tactics that have been perpetrated against Members in the Congress.

Mr. KAGEN. Well, then the question has to be asked, what's really going on here? What is it that our Republican colleagues disagree with us about with regard to protecting not only America, using FISA, but also protecting our constitutional rights? Can we not protect America and our Constitution at the same time?

Mr. YARMUTH. Well, obviously we can. And obviously this body did last fall. We passed a very, very reasonable reauthorization of the Protect America Act which did virtually everything that the President wanted, and it provided authority to surveil under reasonable circumstances. It didn't grant the NSC or any other institution the ability to go on a fishing expedition. It retains some oversight, some court control. Again, this is a secret court. But this is the way the law was set up in 1978. It's worked very well since then. There are some tweaks that are needed in this law. We recognize that. We did what the administration requested. All of a sudden, this issue of immunity comes up. And, again, I can't believe that this has anything to do with worrying about whether AT&T pays out millions of dollars. This is not what they are concerned about. I don't think the gentleman believes that either.

Mr. KAGEN. I appreciate what you just said, but it raises another question.

When you indicate that there is a question of immunity, is that not another word for "amnesty"? Is it correct to say that the current President, President Bush, is seeking amnesty? And if we are going to give amnesty to someone, isn't it a natural thing to ask what are we forgiving somebody for? Don't you think we should understand exactly what someone did before we forgive them and give them amnesty? Isn't that a reasonable thing to ask?

Mr. YARMUTH. I think it's not only reasonable; I think it's our duty to require that because it would be a frivolous act if we just said, well, whatever you did, whether it was legal or not, then we're going to grant you immunity or amnesty for doing that. No, we have to know, in order to grant immunity, whether or not there is a reason to grant immunity. Why would we want to do that if there were no reason to do it?

Mr. KAGEN. Isn't that also one of the reasons why we were sent here to Washington to try to fix this situation where the 109th Congress failed to ask questions, failed to ask the pertinent questions, failed to hold hearings to find out what it is we are fighting for, why we really invaded Iraq, where's our money being spent? I've been told that 20 percent of the money we spent in Iraq is simply unaccounted for. And 20 percent of over a trillion dollars is a lot of billions of dollars. So I think the 110th Congress has a duty, a responsibility, and, yes, a constitutional responsibility to balance the balance of power, to reset the balance, and to also investigate wherever possible and ask questions.

So the questions I would pose to my Republican friends is, what is it you're afraid of? What is it that someone has done wrong? And whom is it we are trying to protect? Are we trying to protect America, or are we trying to protect special interests, either the tele-

phone industry or the people that ask them to break the law in the White House?

Do you think it's possible that what they are really concerned about is their own immunity in the White House? Is that a possibility?

Mr. YARMUTH. Well, I think that's exactly the case.

And I don't blame the telephone companies. I think they were in a very difficult spot. When your government asks you to do something and says that the security of this country is at stake, then I suspect that most corporations would comply with the government's request.

Now, these corporations, being the major corporations that they are, with lots of money, with lots of legal advice, lawyers everywhere, would understand that what they were being asked to do might run afoul of the law. And I would suspect that they did make a decision, being in a very difficult spot, I can see, that I either comply with the government, do what they ask me to do, understanding that the government is regulating me; so they would say, okay, I'm really between a rock and a hard place. I can do what the government asks, knowing it's a violation of the law, or I can refuse and knowing that they are regulating me, that my business might be affected some way or another.

But that's all a different dynamic from what we're dealing with. We are dealing with the question of does the Congress have the responsibility to hold anyone, corporation or individual, accountable if they violate the law? And that's what I think we're talking about today and talking about in this long debate.

Mr. KAGEN. But isn't it also true that not every telephone company bent over and yielded information that was constitutionally protected under the fourth amendment? Isn't it true that Quest in Colorado said, no, not without a court order? And isn't it true that what we are trying to obtain is judicial oversight of the executive branch? And isn't it also a fact that the telephone companies didn't just volunteer the information, that they were being paid to do so, and at one point when they weren't being paid, they stopped turning over the information and stopped the wiretaps?

So I don't think it's just out of a patriotic duty that the companies had. There was a monetary compensation that went along with it. So I think that we have a constitutional duty and the right as representatives of the people that we have the honor of serving to ask these questions and to bring out the reality and the truth of this situation.

Mr. YARMUTH. We have to do this. And I agree with my colleague that what we're talking about here is the oath we took. We took an oath to uphold the Constitution. And the Constitution says that we have to obey the laws of the land and we have to, within

our area of authority, make sure the laws of the land are upheld. And we have to provide oversight for that.

We have been joined by another one of our distinguished colleagues, a freshman Member, one of our most passionate Members from New Hampshire, CAROL SHEA-PORTER, and I yield to her.

□ 2230

Ms. SHEA-PORTER. I am happy to be here. I am standing here tonight at 10:30 for the same reason that we are all here, because we believe that it's our obligation, our duty to defend the Constitution. This Constitution is a gift that has been handed to us through the centuries, and it's the envy of the world. This is what differentiates us from other nations.

To give you an idea of our Founding Fathers and what they thought about this, at the conclusion of the Constitutional Convention, Benjamin Franklin was asked, What have you wrought? And he said, A Republic, if you can keep it.

So they understood even then that we would have to defend this Constitution against well-meaning people who believed that they had to give up some liberty in order to make themselves safe. This is not the first time in our history that we have faced peril, as you know. This has been an ongoing issue for us through the centuries. There are always countries that wish to do us harm, and it is our obligation to keep ourselves safe and to keep the American public safe. But that is not what this argument is about, as you know, because we have FISA, and FISA is in effect.

Now the President more than suggested that the intelligence community went dark and that they would be unable to do any surveillance. But the reality is, and the President and the Justice Department had to admit recently, that the wiretaps could still go on.

I would just like to read this so people understand what we are talking about here. This is from Reuters: "White House Says Phone Wiretaps Back on For Now." Here's the quote, the statement from the Justice Department, the Office of the Director of National Intelligence: "Although our private partners are cooperating for the time being, they have expressed understandable misgivings about doing so in light of the ongoing uncertainty, and have indicated they may well discontinue cooperation if the uncertainty persists." Well, first of all, where is the patriotism there? If they believed this was for the good of the country, they should stay with this program, and will stay with this program.

Also, as my fellow Congressmen indicated, when they failed to pay the bills for the wiretap, these companies pulled the wiretaps, and we lost some critical information. So you have to wonder about that commitment there.

But there's a larger issue. First of all, we do have all the national secu-

rity that we need right now. You're right that we need to tweak it, and we tried to. We tried to extend this for 3 weeks so that we could work it out. If it were so critical, why did the President and his supporters vote to let it go? We voted to extend it for 3 weeks.

So there's something that is counterintuitive and actually bizarre, that the President and his supporters would argue on one hand that we were allowing something to drop that was so critical and, on the other hand, refuse to vote to extend it for 3 weeks. So they didn't give us the time that we needed to do two things. We have to do all we can to protect Americans, and tweak this, but we also have an obligation to protect the Constitution while we do this.

So what have we done here? The intelligence community has not gone dark and the authority under this act allows the administration to conduct surveillance here in the United States of any foreign target. I am now reading from the House majority staff of the House Permanent Select Committee on Intelligence. It's important that we cite these sources so that we know. "In the event that a new phone number or e-mail address is identified, the NSA can add to the existing orders." They can begin surveillance immediately, without a court warrant. Within 72 hours they have to get one. That sounds perfectly reasonable to have judicial oversight and review.

So it's not true that people can't do surveillance. They can do surveillance. They must do surveillance. If we think that there are terrorists talking on the phone, I want them to be able to listen in, and so do you. We have families here. We want the same protection that other Americans want. And they can listen in.

But there's something else happening here, and this is called the retroactive immunity for the phone companies. What do we mean by retroactive immunity. What is immunity about? If you don't do anything wrong, you don't need immunity. Immunity suggests that something happened, and you're asking for this protection. And how can we say, sure we'll give it to you until we know what they did? Why won't they tell us what they did?

I liken it to somebody, a defendant showing up in court and saying to the judge, Well, judge, I may or may not have done something wrong. I am not going to tell you. But I want you to say maybe you did and maybe you didn't, but whatever it is, you're forgiven right away.

We would not accept that from an individual, and we must not accept it for any businesses either. We are, as John Adams said, a government of laws, not men. Nobody is above the law. Not you, not I, not any individual, not any company. They knew what they were supposed to do.

I would like to point out that Qwest knew that, another telecom company, and did not follow the President's re-

quest there. The President is not the one who sets the Constitution. He is not the one who decides. We have three branches of government. We must have judicial review and oversight. And it's our obligation, as it has been on every Congressman and Congresswoman's shoulders, to watch out for this incredibly brilliant document that is the envy of the world.

Mr. YARMUTH. If the gentlelady will yield, I would like to reinforce one statement you made. You talked about the fact that we wanted to extend the act for 21 days so that we could make these corrections. It wasn't just that the President threatened to veto the bill and we voted to extend it. All 202 Republicans voted against the extension.

I actually was mystified to watch a news show right around that time, on which they said the Democrats refused to extend the act. I said, boy, is that ridiculous spin. Because we proposed the extension. Every one of the Republicans opposed it, the President threatened to veto it and demagogued it, and yet we were blamed for something we tried to do.

I yield back.

Ms. SHEA-PORTER. We were looking for a bipartisan agreement. If it's that critical, then we should have had the extension. But they know what we know, which is that FISA is still in effect, that they can eavesdrop without a warrant. That they simply, if there's an American involvement, they have to go get a court warrant within 72 hours.

By the way, that is not difficult to do. Over the period of years, there have been thousands and thousands of requests. I think only five have been refused. So this is not a problem. If they consider having to get a warrant a problem, I am sorry, but something stands between the President and this, and it's called the Constitution.

I come from a Republican family. My father was an attorney, and he was a very conservative Republican. I worked in his law office. And he taught me this great love for the Constitution. So the reason I point that out is because this is not a political issue. This has to do with the Constitution. And so regardless of whether people are Republicans or Democrats, what we saw here when they didn't extend it was a political maneuver. But it should not be. It is our first and foremost obligation to protect our freedoms while we protect our Constitution.

Mr. YARMUTH. I want to yield again to my colleague from Wisconsin, but one of the things that intrigued me earlier was the notion that somehow we were not interested in security, that we were not interested in fighting the most effective fight that we could against 9/11, and that we were playing politics with the security of this country. That seems to me to be kind of standard rhetoric when we are talking about these matters, when in fact we tend not to deal with what is in the actual law, what the facts of the situation are.

I would like to yield again to my colleague from Wisconsin. We have been joined by another distinguished colleague, Mr. PERLMUTTER, from Colorado. I would like you all to engage in a colloquy about the issue of politics and just who might be playing politics with a very important matter of national security.

Mr. KAGEN. Well, I thank you for yielding.

There were two very valuable lessons that I learned during my campaign and election to Congress. The first lesson was that people will believe a lie if it's represented to them with great skill on television repeatedly. People will believe something that just simply isn't true.

Here, the kind way of putting it is misrepresentation of reality. I am continuously amazed at how people are misrepresenting reality. We have never gone dark in our intelligence community. We have continued to survey those who seek to attack us and do us harm. We must stand strong behind our Constitution, and most especially our fourth amendment rights, which reads, "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 and things to be seized."

Now if someone in the United States is seeking immunity, I ask my colleague, Mr. PERLMUTTER, what could be the reasons for seeking amnesty or immunity?

Mr. PERLMUTTER. The reason you seek amnesty or immunity or some sort of protection from being sued or charged is that there may have been wrongdoing. There may have been some violation of a law or potentially a constitutional provision like the fourth amendment, which you just read.

I think really the issue here, and you may all have been over this a dozen times, but it bears repeating, that there is a provision in our wiretapping law, and everybody calls it FISA. This is about wiretapping. This is about eavesdropping. There are times when you need to wiretap. There are times when you need to eavesdrop if somebody you have probable cause or you have general belief that somebody is going to do you harm. It could be a criminal enterprise or it could be a foreigner who wants to attack the United States. There was a glitch in our law which needed to be fixed. There was a technical glitch which said if there was a wiretap on U.S. soil, then you had to get a warrant.

Now the way that telecommunication works these days is somebody could be calling from Pakistan to Germany, two people, foreigners who aren't entitled to the protection of the fourth amendment, but that telecommunication, that phone call is routed through the United States. We

changed the law, we, the Congress, to take care of a technical telecommunication glitch and said in that instance that you don't have to get a warrant. So if it's between a foreign individual and another foreign individual, there's no need for a warrant on foreign property.

Now we fixed this. But the President asked for more. He wants to get rid of the courts who are there to protect us as citizens, as Americans, and the Constitution of the United States. He says, I don't want those courts. I don't think they need to be present. Well, we needed them when Richard Nixon was President. We needed to make sure that before the government, before the White House, before anybody looks in on my house or your house, or any American's house, there has to be a reason. And the courts were that stop. That was that objective branch. So yes, we are going to keep the courts involved.

Secondly, the President or the White House or somebody had asked the phone companies to do these taps. Well, the phone companies knew how to do taps. They got a warrant. The law said, You get a warrant, you're protected, Mr. Phone Company, or Mrs. Phone Company. You can wiretap somebody's phone call. Well, it appears that in this instance they didn't get warrants. They circumvented the courts.

Now we don't know that for sure. We haven't been given all the information that we in the Congress or the people of America deserve. Now the phone companies are asking for amnesty. They are saying, look, if we didn't follow the law, we are sorry. Just forgive us. We know at least one phone company that said, Wait a second, this doesn't make sense. You're not giving us the warrants that the law requires. We are not going to do it. That, I am glad to say, is my local phone company, Qwest.

So it isn't like everybody did this. At least one phone company said we want to follow the law. So, you know, this is about amnesty for other phone companies and this is about avoiding the courts. That is what this administration wants and, quite frankly, I am not going to shirk my responsibility to the Constitution and to the people of this country by caving in to those particular requests.

Mr. KAGEN. Before I yield to my colleague from Iowa (Mr. BRALEY), I have got a question. Millions of people are thinking to themselves right now, and have been, gee, I haven't done anything wrong. What have I got to be worried about?

What have they got to be worried about?

Mr. PERLMUTTER. We each in this country, one of the very first principles that we have and one of the very first values that we hold dearly is our privacy. Now it may not be that I don't have anything to hide, but I might not want the world to know that my

daughter has epilepsy, which she does. Somebody else might not want to have somebody know that their child is failing in school, or that they are having marital problems. Who knows what it is?

We in this country enjoy our privacy. It's something that is protected by the Constitution. And it may be that we haven't committed a crime, that what we have done isn't something that is going to be brought before a court, but it's something that is personal to us.

□ 2245

We in this country enjoy that right. We enjoy that freedom not to have the government snoop into our lives unless there is really a reason. And that is why the courts are present.

I turn to my friends from Kentucky and Iowa.

Mr. YARMUTH. I am going to yield to the gentleman from Iowa in just a second, but I want to ask one question about that, and it is a rhetorical question.

But can you imagine, I want every American to imagine how their lives would change and how their conversations would change if they thought that every phone call they made was being monitored? Just imagine the chilling effect that that would have on every word you say, on your very thought process. You have to be able to put yourself in that situation to understand what is at stake when we talk about this issue. This is not just about nasty people trying to do people wrong. This is about every American having their very being altered by the threat that they are being listened to.

Now I will yield to the gentleman from Iowa, Mr. BRALEY.

Mr. BRALEY of Iowa. I would like to thank my friend. I would also like to thank my friend from New Hampshire, who mentioned earlier the great American patriot and trial lawyer, John Adams, my ancestor.

One of the real thrills of serving in this body is the ability to experience special events. We got that opportunity here tonight when out in Statuary Hall there was a reception and later a special viewing of an incredible new series on HBO dedicated to examining the life of John Adams and the enormous impact he had on this country.

I think it is very significant to take a moment and realize that 238 years ago today the Boston Massacre occurred, one of the pivotal events in our country's founding, and John Adams, a noted trial lawyer of his day, was given the dubious distinction of defending the British soldiers who made the first attack on those patriots, those brave patriots like Crispus Attucks. Like many trial lawyers, he was faced with the responsibility of doing his duty to perform an unpleasant task, and he did it because he knew that it was an important part of maintaining a system of laws, not of men.

I also think it is important to note that of those people like John Adams

who were present at the signing of the Declaration of Independence, 24 of them were lawyers who understood the importance of the very issues we are talking about today.

Why do I know that? Because if you read the Declaration of Independence, you will see the stated grievances against King George and that the amazing parallels in those grievances that they were discussing at the founding of our Nation and the same things we are talking about today is stark.

Let me remind you of what is in the Declaration. These are the grievances they identified against King George III.

For depriving us in many cases of the right to trial by jury, which is why the Seventh Amendment of the Constitution and the Bill of Rights guarantees the trial by jury in all civil cases where the monetary value is in excess of \$15.

Also the grievance for taking and abolishing our most valuable laws and altering fundamentally the forms of our government.

Third, for suspending our own legislatures and declaring themselves, the king, vested with the powers to legislate for us.

That is why these are fundamental civil rights that have been part of this country's history since its founding that we are talking about.

My friend from Colorado made a great point. What we are talking about with the setting up of the FISA courts was setting up retroactive warranties that gave the government the extraordinary ability to do wiretapping without a court order, which had never been before tolerated in this country, with the understanding that the terrorism risk justified that sacrifice, and setting up the FISA courts for an orderly form of due process to look backwards and guarantee that human rights were not being violated. So we are talking here about retroactive immunity, when we have already got retroactive warranties and a process in place to take care of these concerns.

One of the things that nobody has talked about on the floor during the debate over this issue is the fact that retroactive immunity only benefits wrongdoers. If you have done nothing wrong under the law or the Constitution, you don't need immunity.

My friends have been talking about the underlying basis for the violation of laws by the telecoms, and I think we need to state what that is. It goes back to 1934. The Federal Communications Act, Section 222, this Congress imposed on telecommunication carriers, such as all these companies we are talking about, the duty under law to protect sensitive personal customer information from disclosure. That is the basic statutory right that is at stake by allowing retroactive immunity to companies who violate that law.

So when people complain about us arguing the merits of standing up for defense of the Constitution and the laws passed by this Congress, I am at a loss to understand why we should be sub-

ject to all of this angst for simply doing our jobs and standing up for the oath we took when we were sworn in to uphold and defend the Constitution and the laws of this country.

With that, I yield back to my friend.

Mr. KAGEN. If I may ask a question, because I really appreciate your legal acumen, it is good to have roommates that are attorneys. So what you are explaining to us is that I have a right to my own phone records. That the records the phone company might have are not their records. They really are my personal files, and they are entrusted with that information on my behalf and cannot release that information to anyone without my permission or a court order. Did I hear you correctly?

Mr. BRALEY of Iowa. That is the very essence of the authority given to these telecommunications carriers, to use that public trust of allowing them to monitor and handle communications through a system of phone lines, which is what we had back in 1934, and in exchange for that trust, imposing on them the duty to protect that sensitive information. That is why we have the Fourth Amendment. That is why we have a system in place to guarantee the privacy of those customers.

Mr. KAGEN. Just to follow up, if I understand what you are saying, what we are really talking about is everybody's personal individual liberty and their rights as guaranteed under the Constitution, and that giving blanket immunity without asking any questions would be giving away individual liberties and rights. Is that correct, Mr. PERLMUTTER?

Mr. PERLMUTTER. Yes. To my good friend from Wisconsin, this is about the rights we enjoy as Americans, and this is about the responsibility that we have as Members of Congress to make sure that there isn't some violation of the rights that we enjoy as Americans, we as Members of Congress and everybody we represent. Really what has been troubling I think to everybody is that the President says "Trust me. Just give them amnesty. Just give them immunity." The phone companies are saying, "We really can't talk to you because we are sworn to secrecy. Just trust us."

You know, I don't know about any of you and your constituents, but I know that my constituents expect good representation, good oversight of these kinds of things. And if the telecommunications are entitled to some protection, we have given them protection in the law. If you get a warrant, you are immune. You are doing your national duty by wiretapping or using your surveillance powers. But you got to go through the right process to protect those rights that we are so fortunate to enjoy as Americans.

Mr. BRALEY of Iowa. If the gentleman would yield for a question, I know that my friend from Colorado happens to represent a district where the headquarters for one of the tele-

communications carriers is located, Denver, Colorado, where Quest has one of its primary business centers.

What I would like to ask my friend is, why didn't Quest go along with this request from the government? A lot of these other telecoms did. What was it that prompted them to say this doesn't sound right?

Mr. PERLMUTTER. Well, I don't know. I wasn't an attorney for Quest. Just in terms of what I have read and the individuals I have spoken to, I think Quest would respond by saying we wanted to follow the law. It isn't as if Quest has a spotless record everywhere, but in this instance they did the right thing and they have got to be given credit for it. Others chose to maybe take the path of least resistance.

Mr. BRALEY of Iowa. If you would yield for another question, I am going to pose this to all of my friends here on the floor.

When somebody comes to me and asks me to ignore my duties to make sure that the laws and the Constitution are followed, which is what they are asking us to do by granting immunity to these phone companies, I think the average American citizen would expect at a minimum that I would be aware of what was in these documents that are at the subject of this request for immunity.

I don't know about the rest of you, but I haven't seen a single document that has been produced in order to supposedly justify a claim for immunity. I am just curious whether any of my friends have seen them in their capacity as a Member of Congress?

Mr. KAGEN. I appreciate the question. I am not very good with analogies, but it kind of sounds like a blind umpire, doesn't it? If we don't know what we are looking at, how can we judge if it is fair or foul or a strike or a ball, in baseball parlance.

But let me come back to this idea about cherry picking our laws and cherry picking it apart to the point where the law doesn't mean anything. Earlier today in this Chamber we had the distinct privilege of passing a law about mental health care, about mental health care insurance. We laid the foundation, the foundation that would establish our constitutional rights in health care, so that people will not be discriminated against on the basis of a preexisting condition, albeit mental health care or a heart condition or otherwise.

But the idea of cherry picking our Constitution and our laws, are the signing statements, the many hundreds of signing statements by this administration or by this President, is that a sign or a symptom of cherry picking our laws? Is this a situation we are in now, where we finally have found a President that doesn't believe in the Constitution, that won't enforce the laws, either immigration or our constitutional rights? Mr. PERLMUTTER?

Mr. PERLMUTTER. Well, I want to step back for a second and just talk

about what I think our responsibility is with respect to this wiretapping surveillance stuff and our responsibility as Members of Congress, and really as citizens of this country, because we each have an obligation as citizens to do these same things, to uphold the Constitution and the rights that we all enjoy under the Constitution and to make our citizenry safe, to help make our families safe, our neighborhoods safe, our communities safe.

There is a way under the law as we have revised this surveillance law to do both of those things. We have fixed this technical problem that existed where foreigners were given certain rights under our Fourth Amendment that they weren't entitled to. We have corrected that in this law. But we have maintained the Fourth Amendment and the First Amendment and the Third Amendment and everything else within the Constitution for each and every American by including the courts to oversee this and supervise when the government says we want to eavesdrop on a citizen, and we are demanding of the President and the telecommunications companies, we want to see what it is you are asking us to let you off the hook about.

That is what is being asked. And they are saying sorry, we are not going to let you look at that. Therefore, we are going to say, then we are not doing our job. We are not going to just let you go get a get-out-of-jail-for-free or go scot-free without information. We are not doing our job then. We are not being accountable and responsible to our constituents.

As the President has laid this out, he is just trying to stir up fear in the American populace, which is wrong. He is trying to avoid the courts as being a check and balance on the awesome power of the Federal Government to invade our privacies. He doesn't want that, and he is asking us to give this carte blanche amnesty without really giving us the basis for that, and I object to all of those things. With that, I yield back to my friend.

Mr. YARMUTH. There is some other history we haven't talked about tonight yet, and that is the background of this controversy. Because what we fail to remember as we debate this issue, and obviously I think we want to deal with this prospectively, we want to make sure that this country has the power, the government has the power and authority and tools it needs to provide legitimate security for this country.

□ 2300

But this program started right after September 11, 2001, and continued for 4 years before it was exposed by the New York Times. So this was a long-standing violation of the law, a deliberate avoidance of the law by the administration. They could at any time after 9/11 have come to Congress and said, we want some additional authority. But they didn't do that. They knew

that it would be tough. Even a Republican Congress at that time might have looked askance at requests to do warrantless wiretapping, so they just did it by themselves for 4 years. Then, when it was uncovered, this Congress under Republican leadership rushed to pass the Protect America Act, a stop-gap measure because, obviously, it was embarrassing and they needed to do that.

But this is a longstanding deliberate ignoring of the law, and this is something that it doesn't matter whether the government sanctioned it; if companies did it and violated the law, as I said at the outset of my remarks standing right behind you, Mr. KAGEN, the words described in that dais, justice. And that is what this country has been built on. And this is a long-standing violation that needs to be redressed, and we shouldn't just say, because the government asked them to do something, that it is okay, that they broke the law. Because if that is the precedent we are setting, there is no end to the imagination of horrors that could happen if the government were able to immunize anyone for any violation of the law.

With that, I would like to yield again to CAROL SHEA-PORTER from New Hampshire who has joined us.

Ms. SHEA-PORTER. I would like to point out that if the President and his supporters managed to cut out the judicial branch, then the authority for this would go to the Attorney General and the Director of National Intelligence. Our most recent former Attorney General was Alberto Gonzalez, and I think that we do not wish to put that kind of power into the hands of people who may not see the government's role the way that we do. So I have deep concerns about that. But, again, this is not an issue of what party you are in. This is an issue of whether you are an American and you believe in our Constitution or not.

I wanted to quote Andrew Napolitano, who was a New Jersey Superior Court Judge from 1987 to 1995, and is the senior judicial analyst at Fox News. He is upset about this as well, and he said: Those who believe the Constitution means what it says should tremble at every effort to weaken any of its protections. The Constitution protects all persons and all people. And, he said, if we lower constitutional protections for foreigners and their American correspondents, for whom will we lower them next?

And that really is the question. We stand our ground now, and we protect at least our American citizens from this eavesdropping.

The question earlier was, well, what do you have to hide? And I would say that even though you may not be placing phone calls that have anything to do with any government business, you may be having a conversation about your boss's wife or husband. You may be having a conversation about your husband's problem at work. You may

be having a conversation about your neighbor. And any of those conversations, if they were overheard, could be used against you. So it is not simply the kind of setting that we are talking about right now, not a grander setting, a setting where it is national security, but simply your right to privacy and for your neighbors not to know the kinds of thoughts and the kinds of words that you share with people in private phone conversations. So we have this obligation to stand here and protect all of us.

FISA

The SPEAKER pro tempore (Mr. BRALEY of Iowa). Under the Speaker's announced policy of January 18, 2007, the gentleman from Texas (Mr. BURGESS) is recognized for 55 minutes.

Mr. BURGESS. I thank the Speaker for the recognition.

It has been an interesting and entertaining hour that we have just been through. I came to the floor tonight to talk a little bit about the Middle East, but after hearing the comments for the last hour I would just remind my friends that the Senate passed a bill that passed with a fairly significant majority over in the Senate. And if the Senate-passed bill were brought to the floor of the House, we would have our FISA legislation reestablished. There are enough Members on their side combined with the Members on my side where the bill would pass without any difficulty. But it has been the lack of the will of the House leadership to bring this very important bill to the House and once again establish a modicum of protection for America, because, after all, despite all the lofty rhetoric we just heard in the last hour, it is not surveillance of American citizens on American soil, it is surveillance of individuals who are outside of America, outside the shores of America who are communicating with each other. But because of the nuances of the telecommunications system, those wires may pass through the United States, a server may exist in the United States, and therein the problem lies.

And it is important, because as I talk about the Middle East I am going to come back to this issue on the Foreign Intelligence Surveillance Act, because the lack of a functioning Foreign Intelligence Surveillance Act is actually hampering some of our progress in the Middle East and I think it is important to draw that distinction.

Again, as I said, Mr. Speaker, I just returned a little over a week ago from a trip to Afghanistan, Pakistan, and Iraq. As a consequence, I was also in Kuwait briefly. But it is significant, and probably the first time where I have been in those three countries in that short a period of time. It is instructive to visit those countries in that condensed time period, because you really get a sense of how interconnected the successes and/or failures