

appear hereafter in the Extensions of Remarks.)

WOMEN'S HISTORY MONTH

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Texas (Ms. JACKSON-LEE) is recognized for 5 minutes.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise tonight in honor of women's history month, and to pay tribute to the countless mothers and grandmothers, sisters and daughters, friends and neighbors that are active across our communities, cities, and our Nation. Women who inspire us, who are the conscience of our communities, and, most of all, women who are the unsung heroes of our shared historical past.

In the early days of our great Nation, women were relegated to second-class status. Women were considered sub-sets of their husbands, and after marriage they did not have the right to own property, maintain their wages, or sign a contract, much less vote. It was expected that women be obedient wives, never to hold a thought or opinion independent of their husbands. It was considered improper for women to travel alone or to speak in public.

The fight for women's suffrage was formally begun in 1848, and, in 1919, after years of petitioning, picketing, and protest parades, the Nineteenth Amendment was passed by both houses of Congress and in 1920 it became ratified under the presidency of Woodrow Wilson.

However, the right to vote did not give women equal rights, and subsequent decades saw an ongoing struggle for equality. A major success came in with Title IX of the Education Amendments of 1972, also known as the Patsy T. Mink Equal Opportunity in Education Act, in honor of its principal author. This law, enacted on June 23, 1972, states "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

Title XI, introduced by Congresswoman Patsy Mink (also notable as the first Asian American woman elected to Congress), has opened the doors to countless educational activities, perhaps most prominently high school and collegiate athletics, to women. Congresswoman Mink's legacy lives on as, each year, hundreds of women across the Nation participate in NCAA athletics, learn teamwork and perseverance, earn scholarships enabling them to study at college, and enjoy equal footing with men in the academic arena.

Mr. Speaker, I am proud to pay tribute to the women, local heroes, of my district. Women like Ramona Tolliver, long time Fifth Ward resident, former Precinct Chair, founding board member of Fifth Ward Community Redevelopment Corporation, member of Our Mother of Mercy Catholic Church, and member of the Metropolitan Organization member, who is still actively advocating for her community. Women like Nellie Joyce Punch, long time Fifth Ward resident, retired educator at Phyllis Wheatley High School, former Precinct Chair, founding board member of Fifth Ward Community Redevelopment Corporation, member of Methodist Church, also still actively working on behalf of her community. Both Ms.

Tolliver and Ms. Punch are active in Houston's Fifth Ward, where they act as the conscience for the community, calling for change and actively working to better our city.

Women like Dr. Charlesetta Deason, principal of Houston's DeBakey High School for Health Professions. Dr. Deason helms a school that offers students interested in science and health careers an alternative to the traditional high school experience, located in the renowned Texas Medical Center and boasting an ethnically diverse faculty and an excellent introductory study of medicine.

Or women like Harris County Commissioner Sylvia Garcia, the first Hispanic and first woman to be elected in her own right to the office. Commissioner Garcia is active in the Houston community, and she has served on more than 25 community boards and commissions, including the San Jacinto Girl Scouts, the Houston Hispanic Forum, the American Leadership Forum, the Texas Southern University Foundation and the Institute of Hispanic Culture.

As a Nation, we have come a long way toward recognizing the important role women play, not only in our local communities, but in our Nation as a whole. Since 1917, when Representative Jeannette Rankin of Montana became the first woman to serve in Congress, 243 more women have served as U.S. Representatives or Senators. In 1968, Shirley Chisholm became the first African American woman elected to Congress; I am now proud to be one of 13 African American women serving in this body.

In addition, we are now, for the first time, under the leadership of a woman Speaker of the House. Speaker PELOSI has led this Democratic Congress in a New Direction, listening to the will of the American people, as it was clearly expressed last November. We are also currently in the midst of a groundbreaking Presidential campaign, which, for the first time, sees a woman seriously vying for the nomination of one of the two major political parties.

Mr. Speaker, the great tragedy of women's history is that, many times, the history of women is not written down. Too often, throughout the course of history, the contributions of women have gone unrecorded, unheralded, and are now forgotten. And so, Madam Speaker, during Women's History Month, we do not stand here only to remember the Eleanor Roosevelts, Harriet Tubmans, Barbara Jordans, and Rosa Parks, women who are celebrated in our schools and history books, but also the millions of female unsung heroes who built this Nation, and who made it truly great.

I would like to pay special tribute to women, mothers, and grandmothers across the country. In particular, I would like to draw attention to the growing phenomenon of grandparents raising children. As of 1996, 4 million children were being raised by their grandparents, and statistics published the following year indicated that over one-tenth of all grandparents provided the primary care for their grandchildren for at least six months and typically much longer. These numbers continue to grow, and these grandparents, generally ineligible for financial or social support, often suffer greatly to provide a safe and loving home for these children.

In addition, Mr. Speaker, we pay tribute to the brave women who serve proudly in our

Nation's military. We have come a long way since the first American woman soldier, Deborah Sampson of Massachusetts, who enlisted as a Continental Army soldier under the name of "Robert Shurtlief." Women served with distinction in World War II: 350,000 American women served during World War II, and 16 were killed in action. In total, they gained over 1,500 medals, citations and commendations. In December 1989, CPT Linda L. Bray, 29, became the first woman to command American soldiers in battle, during the invasion of Panama.

The war in Iraq marks the first time in American history that a substantial number of the combat wounded are women. 350,000 women are serving in the U.S. military—almost 15 percent of active duty personnel, and one in every seven troops in Iraq is a woman. Women play a role in nearly all types of military operation, and they have time and time again demonstrated extreme bravery, courage, and patriotism.

I would particularly like to honor one of our heroic daughters: Army SPC Monica L. Brown. Brown is the first woman in Afghanistan and only the second female soldier since World War II to receive the Silver Star, the Nation's third-highest medal for valor. Army SPC Monica Brown was part of a four-vehicle convoy patrolling near Jani Kheil in the eastern province of Paktia on April 25, 2007, when a bomb struck one of the Humvees. After the explosion, in which five soldiers in her unit were wounded, Brown ran through insurgent gunfire and used her body to shield wounded comrades as mortars fell less than 100 yards away. Army Specialist Brown, a native Texan, represents the best of our Nation's fighting men and women, and she clearly demonstrates that the admirable qualities of patriotism, valor, and courage know no gender.

Mr. Speaker, Women's History Month is an opportunity for all Americans to reflect on the women who have built, strengthened, and maintained this great Nation. Women who have often gone unrecognized, unheralded, and unlauded for their great achievements, sacrifices, and contributions. I ask my colleagues to join me in paying tribute to the women in their communities, in their families, and in their lives.

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

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

FISA

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

Mr. MCCAUL of Texas. Forty-five days ago, the Protect America Act expired. Forty-five days ago, we began to lose critical intelligence overseas that could help better protect this Nation. Forty-five days ago, al Qaeda began to have the upper hand in this war on terror. Forty-five days ago, we started to

go dark in parts of the world. Why? Because the Democratic leadership will not allow this body to vote to make the Protect America Act permanent, as the Senate did many months ago.

Mr. Speaker, this is a dangerous and reckless partisan play with the safety of the American people. It endangers the American people, both here at home and the warfighter abroad. We took an oath of office when we were sworn in to protect and defend the Constitution against all enemies, foreign and domestic. These are the foreign enemies. We are talking about foreign terrorists in a foreign country communicating foreign communications. This has nothing to do with the United States citizens. And yet, what the Democrats are allowing is to extend constitutional protections to people like Osama bin Laden and Khalil Sheikh Mohammad, al Qaeda leaders who are communicating about how they can perpetrate an act of evil like on September 11th.

Mr. Speaker, there is a reason why this has not occurred since 9/11. It is because we have had good intelligence. Good intelligence is the best weapon we have in this war on terror. Without good intelligence, we cannot protect this Nation. And this is what this debate is all about. We all remember where we were on this day. But many of us don't remember where we were when the London arrests were made to stop airplanes from being blown up over the United States. Many of us don't remember the countless acts of heroism our intelligence community has performed in protecting the American people from plots against the United States.

I, myself, when I worked at the Justice Department, worked on Foreign Intelligence Surveillance Act warrants. They had to do with agents of informed power in the United States. Through the use of good intelligence overseas, without having to go through the FISA Court, we were able to stop a terrorist plot to blow up 10 American cities on the 4th of July. The voice that was intercepted said, "Roast the Americans on Independence Day."

Mr. Speaker, this is real. This is a real-life threat to the American people. You don't have to take my word for it. I want to read for you a letter that was sent to the chairman of the Intelligence Committee, Mr. REYES, from the Attorney General and the Director of National Intelligence about the expiration of the Protect America Act. What he says, he says, "Our experience since Congress allowed the Protect America Act to expire without passing a bipartisan Senate bill," the bipartisan bill that was passed overwhelmingly in the Senate, that Senator ROCKEFELLER supported, he says, "demonstrates why the Nation is now more vulnerable to a terrorist attack and other foreign threats."

He explained that both the Attorney General and the Director of National Intelligence say in this letter to Chair-

man REYES that the expiration of the authorities in the Protect America Act would plunge, would plunge critical intelligence programs into a state of uncertainty, which could cause us to delay the gathering of, or simply miss critical foreign intelligence information, and then underlined and highlighted in this letter, they warn the chairman, the Democratic chairman of the Intelligence Committee, that is exactly what has happened since the Protect America Act expired 6 days ago without enactment of the bipartisan Senate bill. We have lost intelligence information this past week as a direct result of the uncertainty created by Congress's, by Congress's failure to act.

What is the response from the Democrat leadership here in the House in response to a letter that says that we have failed to act in the Congress, a dereliction of duty, in my view, by Members of the House. STENY HOYER, the majority leader says, there really is no urgency. Let's all just calm down. Intelligence agencies have all the tools they need. Really? When the Director of National Intelligence says just the opposite.

Chairman SILVESTRE REYES says, you know, things will be just fine. Things will be just fine. Tell the American people that if we get hit again. Tell the three American soldiers who were kidnapped by insurgents in Iraq, and because we had to get "lawyered up" and go through a court in the United States because the time expired, one of those soldiers was killed and two we have not heard from since. You tell the families that there is no urgency and that things will be just fine.

Winning this war on terror, as the 9/11 Commission said, has everything to do with connecting the dots. But if we are not allowed to collect the dots, there is no way we can connect the dots. That is what this debate is all about. It's about being able to capture overseas foreign intelligence by terrorists, by people who wish to do us harm, who every day are hoping that this will happen again.

With that, I would like to yield to the gentlelady from New Mexico, who has really led the fight in the House on this issue, Congresswoman HEATHER WILSON from New Mexico. I would also be interested in your account of when this intelligence gap, if you will, this terrorist loophole first came to your attention.

With that, I yield.

Mrs. WILSON of New Mexico. I thank my colleague from Texas for yielding the time. It was actually a year ago in May when I became absolutely determined to get this fixed, and it was a result of a series of cases in what I saw as a growing problem in intelligence collection.

But so that people understand, in 1978 the Congress passed a law that governed intelligence collection here in the United States, and it was in response to a bunch of abuses that happened in the 1950s and the 1960s. Some-

one gave me a copy of a declassified memorandum signed by Robert Kennedy and J. Edgar Hoover authorizing the wiretapping of Martin Luther King. Intelligence agencies were involved in abuses and violating the civil liberties of Americans in the 1950s and 1960s, and this law in 1978 set up a special court called the Foreign Intelligence Surveillance Court. They meet in secret session. But in order to listen and to do a wiretap for the collection of foreign intelligence in the United States, you need to get a warrant from this court.

The problem is that the law was written specific to the technology of the time. 1978 was the year that I graduated from high school. The telephone was connected to the wall in the kitchen. The Internet did not exist. Cell phones were Buck Rogers stuff. At that time, almost all international calls went over the air. They bounced off satellites. And the law does not require a warrant to collect any of that information. Almost all local calls were on a wire. And the focus was if you touched a wire, you needed a warrant because that was presumed to be a local call.

Now, technology has completely changed. There are over 220 million cell phones in the United States. And now, almost all international calls go over a wire or a fiberoptic cable, not bounced off of satellites. So all of the foreign intelligence collection, foreign intelligence information which we used to collect over the air, without requiring any warrants at all, has migrated to wires; even more than that, because of global telecommunications.

Telecommunications flow on the path of least resistance. So somebody making a phone call from the Horn of Africa into Pakistan, let's say, that call has a significant probability of actually being routed through the United States. Even a call from northern Spain to southern Spain may actually end up getting routed through the United States.

Early last year, there was a series of court decisions that found that even if we are intending to listen to a foreigner in a foreign country, if the point of access required touching a wire in the United States, then you needed a warrant. This threw a complete monkey wrench into intelligence collection. By the summer of last year, the Director of National Intelligence has testified in open session that we had lost two-thirds of our intelligence collection on terrorism.

The problem was becoming critical, and as a result, we passed something called the Protect America Act in the first week of August that said very clearly if you were in the United States, you needed to get a warrant. If your target was outside of the United States, then you did not need to get a warrant. It went back to the original intention of the Foreign Intelligence Surveillance Act of 1978.

We worked through the backlog in the 6 months that that temporary act

was in place. Unfortunately, that act was allowed to expire on the 16th of February, and now we have gone back to the old system for all new tips and tips that are coming into the intelligence agencies. Anything that was already under a warrant, was covered for a year. But intelligence is a dynamic thing. There are new tips that come in every day. It's a little bit like law enforcement. You're going after the bad guys every day. There are things that happen and you get new tips and new leads, and all of those new leads have to be dealt with under an old and cumbersome system that does not allow America to keep pace with the terrorists we are trying to track.

The key here is to prevent another terrorism attack, and our strongest and most important tool in the war against terrorism is good intelligence. If we can figure out what they are doing, we can stop them. The key is to figure out what they are doing, and that means good and timely intelligence.

I yield back to my colleague.

Mr. MCCAUL of Texas. If I can ask the gentlelady that serves on the Intelligence Committee, we are talking, are we not, about foreign communications by a foreign target in a foreign country, but just because of the new technology, that it may touch a wire in the United States, it requires us to get attorneys to go before the FISA court to get a warrant. Is that correct?

Mrs. WILSON of New Mexico. That is correct. Under the law that we are trying to get passed, that passed the Senate by a bipartisan vote with 68 votes, it would not be required to get a warrant to listen to a foreigner in a foreign country. Unfortunately, the leadership here in the House will not allow that bill to come up for a vote.

Twenty-one Democrats, over 20 State Attorney Generals have asked the leadership of this House to allow that bill to be brought up for a vote.

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I think it would pass with an overwhelming, bipartisan majority.

So we have the liberal Democratic leadership thwarting the majority of this House and compromising the safety and security of this country, and I believe they are doing it largely at the behest of trial lawyers who are eager to sue telephone companies, who can't defend themselves in civil court without compromising the way we collect intelligence.

Mr. MCCAUL of Texas. I thank the gentlewoman. So the threat is not only to the safety of American lives, in my view it is a threat to democracy. If this bill was allowed to come to the floor, it would pass overwhelmingly, as it did in the Senate.

Briefly before I yield, the gentlewoman talked a lot about the Foreign Intelligence Surveillance Act. I practiced law under that.

Admiral Inman, who is a supporter of mine, a friend in Austin, Texas, was

the Deputy Director of the CIA, Director of the NSA. He was one of the principal authors of the FISA statute. When we talked about the application of this, having to apply the FISA overseas to foreign terrorists, that we are extending constitutional protections to terrorists in foreign countries, what he said, and he wrote an op-ed with me, he said, "To apply FISA to monitoring foreign communications of suspected terrorists operating overseas, such as Osama bin Laden and other key al Qaeda leaders, turns the original intent of the FISA statute on its head. Contrary to some of the rhetoric coming from the Democrats, it is the members of al Qaeda, not American citizens, who are the target of these intelligence gathering activities."

As the gentlewoman mentioned, in my view the driving force behind this dereliction of duty, this stopping democracy, is driven by a narrow special interest, and that is the ACLU and the trial lawyers pushing their agenda in a dangerous way that will put the American people at grave risk.

With that, I would like to yield to my good friend, the gentleman from Pennsylvania (Mr. DENT).

Mr. DENT. I would like to thank the gentleman from Texas and the gentlewoman from New Mexico for their strong leadership and advocacy on this critical national security issue. I think the colloquy engaged in really does represent the essence of the issue.

Former Director Bobby Inman was just quoted saying that it seems that there is greater concern around this Congress by a minority, frankly, to grant constitutional protections to foreign terrorists, really at the expense of protecting Americans.

I think we all know that is wrong. I think the colloquy you both just engaged in, and I heard the frustration expressed in your voice, I think that is also the frustration we are hearing from the American people. The American people do believe that Washington is broken, and I have said this many times. They are angry because Congress is not getting things done on their behalf, and this issue is just proof positive of this terrible failure.

It has been pointed out that we have a bipartisan agreement in the Senate, 68 votes. We have more than a majority in this House to pass this critical legislation, the Protect America Act. It will pass, if only the Speaker will allow this legislation to come up for a vote. They simply want us to put the national interests ahead of the special interests.

As you pointed out, the most litigious among us in this society are driving this issue and preventing the protection of the American people. I think it is just wrong, and we all know it is wrong. The bipartisan solution on FISA has been reached. There really are no more excuses. It is time for this leadership of the House to take "yes" for an answer. It is time to get the job done.

It has been 45 days, 45 days, since the Protect America Act has expired. Sen-

ator ROCKEFELLER, the Chair of the Intelligence Committee in the Senate, the Democrat from West Virginia, has made a plea, and I am going to quote him. He said, "What people have to understand around here is that the quality of the intelligence we are going to be receiving is going to be degraded. It is going to be degraded. It is already going to be degraded as telecommunication companies lose interest." That was Senator ROCKEFELLER, not me.

The gentleman from Texas pointed out earlier too the letter that was sent to the chairman of the House Intelligence Committee, SILVESTRE REYES, from the Director of National Intelligence, Mr. MCCONNELL, and Attorney General Mukasey, essentially saying something very, very similar. I will read a quote from them in that letter of February 27, 2008. I will be happy to submit that letter for the RECORD here this evening.

But I am going to quote what they said about the degradation of our intelligence capabilities, pretty much agreeing with what Senator ROCKEFELLER said, a Democrat. What they said is, "That is exactly what has happened since the Protect America Act expired 6 days ago without enactment of the bipartisan Senate bill. We have lost intelligence information this past week as a direct result of the uncertainty created by Congress' failure to act." That was 6 days after the act. It is 45 days today.

They go on to say, "Because of this uncertainty, some partners have reduced cooperation. In particular they have delayed or refused compliance with our requests to initiate new surveillances of terrorists and other foreign intelligence targets under existing directives issued pursuant to the Protect America Act."

Mr. Speaker, I include the letter for the RECORD.

FEBRUARY 22, 2008.

Hon. SILVESTRE REYES,
Chairman, House Permanent Select Committee
on Intelligence, House of Representatives,
Washington, DC.

DEAR CHAIRMAN REYES, the President asked us to respond to your letter of February 14, 2008, concerning the urgent need to modernize the Foreign Intelligence Surveillance Act of 1978 (FISA). Your assertion that there is no harm in allowing the temporary authorities provided by the Protect America Act to expire without enacting the Senate's FISA reform bill is inaccurate and based on a number of misunderstandings concerning our intelligence capabilities. We address those misunderstandings below. We hope that you find this letter helpful and that you will reconsider your opposition to the bill passed last week by a strong bipartisan majority in the Senate and, when Congress returns from its recess, support immediately bringing the Senate bill to the floor, where it enjoys the support of a majority of your fellow members. It is critical to our national security that Congress acts as soon as possible to pass the Senate bill.

Intelligence collection

Our experience since Congress allowed the Protect America Act to expire without passing the bipartisan Senate bill demonstrates why the Nation is now more vulnerable to

terrorist attack and other foreign threats. In our letter to Senator Reid on February 5, 2008, we explained that: "the expiration of the authorities in the Protect America Act would plunge critical intelligence programs into a state of uncertainty which could cause us to delay the gathering of, or simply miss, critical foreign intelligence information." That is exactly what has happened since the Protect America Act expired six days ago without enactment of the bipartisan Senate bill. We have lost intelligence information this past week as a direct result of the uncertainty created by Congress' failure to act. Because of this uncertainty, some partners have reduced cooperation. In particular, they have delayed or refused compliance with our requests to initiate new surveillances of terrorist and other foreign intelligence targets under existing directives issued pursuant to the Protect America Act. Although most partners intend to cooperate for the time being, they have expressed deep misgivings about doing so in light of the uncertainty and have indicated that they may well cease to cooperate if the uncertainty persists. We are working to mitigate these problems and are hopeful that our efforts will be successful. Nevertheless, the broader uncertainty caused by the Act's expiration will persist unless and until the bipartisan Senate bill is passed. This uncertainty may well continue to cause us to miss information that we otherwise would be collecting.

Thus, although it is correct that we can continue to conduct certain activities authorized by the Protect America Act for a period of one year from the time they were first authorized, the Act's expiration has and may well continue to adversely affect such activities. Any adverse effects will result in a weakening of critical tools necessary to protect the Nation. As we explained in our letter to Senator Reid, expiration would create uncertainty concerning:

The ability to modify certifications and procedures issued under the Protect America Act to reflect operational needs and the implementation of procedures to ensure that agencies are fully integrated protecting the Nation;

The continuing validity of liability protection for those who assist us according to the procedures under the Protect America Act;

The continuing validity of the judicial mechanism for compelling the assistance of private parties needed to protect our national security;

The ability to cover intelligence gaps created by new communication paths or technologies.

Our experience in the past few days since the expiration of the Act demonstrates that these concerns are neither speculative nor theoretical: allowing the Act to expire without passing the bipartisan Senate bill has had real and negative consequences for our national security. Indeed, this has led directly to a degraded intelligence capability.

It is imperative that our intelligence agencies retain the tools they need to collect vital intelligence information. As we have explained before, the core authorities provided by the Protect America Act have helped us to obtain exactly the type of information we need to keep America safe, and it is essential that Congress reauthorize the Act's core authorities while also extending liability protection to those companies who assisted our Nation following the attacks of September 11, 2001. Using the authorities provided in the Protect America Act, we have obtained information about efforts of an individual to become a suicide operative, efforts by terrorists to obtain guns and ammunition, and terrorists transferring money. Other information obtained using the authorities provided by the Protect America

Act has led to the disruption of planned terrorist attacks. The bipartisan Senate bill would preserve these core authorities and improve on the Protect America Act in certain critical ways, including by providing liability protection to companies that assisted in defending the country after September 11.

In your letter, you assert that the Intelligence Community's ability to protect the Nation has not been weakened, because the Intelligence Community continues to have the ability to conduct surveillance abroad in accordance with Executive Order 12333. We respectfully disagree. Surveillance conducted under Executive Order 12333 in a manner that does not implicate FISA or the Protect America Act is not always as effective, efficient, or safe for our intelligence professionals as acquisitions conducted under the Protect America Act. And, in any event, surveillance under the Protect America Act served as an essential adjunct to our other intelligence tools. This is particularly true in light of the changes since 1978 in the manner in which communications are transmitted. As a result of these changes, the Government often has been required to obtain a FISA Court order prior to surveillance of foreign terrorists and other national security threats located outside the United States. This hampered our intelligence collection targeting these individuals overseas in a way that Congress never intended, and it is what led to the dangerous intelligence gaps last summer. Congress addressed this issue temporarily by passing the Protect America Act but long-term FISA reform is critical to the national security.

We have provided Congress with examples in which difficulties with collections under the Executive Order resulted in the Intelligence Community missing crucial information. For instance, one of the September 11th hijackers communicated with a known overseas terrorist facility while he was living in the United States. Because that collection was conducted under Executive Order 12333, the Intelligence Community could not identify the domestic end of the communication prior to September 11, 2001, when it could have stopped that attack. The failure to collect such communications was one of the central criticisms of the Congressional Joint Inquiry that looked into intelligence failures associated with the attacks of September 11. The bipartisan bill passed by the Senate would address such flaws in our capabilities that existed before the enactment of the Protect America Act and that are now resurfacing. We have provided Congress with additional and detailed examples of how the Protect America Act temporarily fixed this problem and have demonstrated the operational need to provide a long-term legislative foundation for these authorities by passing the bipartisan Senate bill.

In your letter, you also posit that our intelligence capabilities have not been weakened, because the Government can employ the outdated provisions of FISA as they existed before the Protect America Act. We respectfully disagree. It was that very framework that created dangerous intelligence gaps in the past and that led Congress to pass the Protect America Act last summer.

As we have explained in letters, briefings and hearings, FISA's requirements, unlike those of the Protect America Act and the bipartisan Senate bill, impair our ability to collect information on foreign intelligence targets located overseas. Most importantly, FISA was designed to govern foreign intelligence surveillance of persons in the United States and therefore requires a showing of "probable cause" before such surveillance can begin. This standard makes sense in the context of targeting persons in the United States for surveillance, where the Fourth

Amendment itself often requires probable cause and where the civil liberties of Americans are most implicated. But it makes no sense to require a showing of probable cause for surveillance of overseas foreign targets who are not entitled to the Fourth Amendment protections guaranteed by our Constitution. Put simply, imposing this requirement in the context of surveillance of foreign targets located overseas results in the loss of potentially vital intelligence by, for example, delaying intelligence collection and thereby losing some intelligence forever. In addition, the requirement to make such a showing requires us to divert our linguists and analysts covering al-Qa'ida and other foreign threats from their core role—protecting the Nation—to the task of providing detailed facts for FISA Court applications related to surveillance of such foreign targets. Our intelligence professionals need to be able to obtain foreign intelligence from foreign targets with speed and agility. If we revert to a legal framework in which the Intelligence Community needs to make probable cause showings for foreign terrorists and other national security threats located overseas, we are certain to experience more intelligence gaps and miss collecting information.

You imply that the emergency authorization process under FISA is an adequate substitute for the legislative authorities that have lapsed. This assertion reflects a basic misunderstanding about FISA's emergency authorization provisions. Specifically, you assert that the National Security Agency (NSA) or the Federal Bureau of Investigation (FBI) "may begin surveillance immediately" in an emergency situation. FISA requires far more, and it would be illegal to proceed as you suggest. Before surveillance begins the Attorney General must determine that there is probable cause that the target of the surveillance is a foreign power or an agent of a foreign power and that FISA's other requirements are met. As explained above, the process of compiling the facts necessary for such a determination and preparing applications for emergency authorizations takes time and results in delays. Again, it makes no sense to impose this requirement in the context of foreign intelligence surveillance of targets located overseas. Because of the hurdles under FISA's emergency authorization provisions and the requirement to go to the FISA Court within 72 hours, our resource constraints limit our use of emergency authorizations to certain high-priority circumstances and cannot simply be employed for every foreign intelligence target.

It is also inaccurate to state that because Congress has amended FISA several times, there is no need to modernize FISA. This statement runs counter to the very basis for Congress's passage last August of the Protect America Act. It was not until the passage of this Act that Congress amended those provisions of FISA that had become outdated due to the communications revolution we have experienced since 1978. As we explained, those outdated provisions resulted in dangerous intelligence gaps by causing constitutional protections to be extended to foreign terrorists overseas. It is critical that Congress enact long-term FISA modernization to ensure that the Intelligence Community can collect effectively the foreign intelligence information it needs to protect the Nation. The bill passed by the Senate would achieve this goal, while safeguarding the privacy interests of Americans.

Liability protection

Your assertion that the failure to provide liability protection for those private-sector firms that helped defend the Nation after the September 11 attacks does not affect our intelligence collection capability is inaccurate

and contrary to the experience of intelligence professionals and to the conclusions the Senate Select Committee on Intelligence reached after careful study of the matter. It also ignores that providing liability protection to those companies sued for answering their country's call for assistance in the aftermath of September 11 is simply the right thing to do. Through briefings and documents, we have provided the members of your committee with access to the information that shows that immunity is the fair and just result.

Private party assistance is necessary and critical to ensuring that the Intelligence Community can collect the information needed to protect our country from attack. In its report on S. 2248, the Intelligence Committee stated that "the intelligence community cannot obtain the intelligence it needs without assistance" from electronic communication service providers. The Committee also concluded that "without retroactive immunity, the private sector might be unwilling to cooperate with lawful Government requests in the future without unnecessary court involvement and protracted litigation. The possible recution in intelligence that might result from this delay is simply unacceptable for the safety of our Nation." Senior intelligence officials also have testified regarding the importance of providing liability protection to such companies for this very reason.

Even prior to the expiration of the Protect America Act, we experienced significant difficulties in working with the private sector because of the continued failure to provide liability protection for such companies. These difficulties have only grown since expiration of the Act without passage of the bipartisan Senate bill, which would provide fair and just liability protection. Exposing the private sector to the continued risk of billion-dollar class action suits for assisting in efforts to defend the country understandably makes the private sector much more reluctant to cooperate. Without their cooperation, our efforts to protect the country cannot succeed.

Pending legislation

Finally, as you note, the House passed a bill in November to amend FISA, but we immediately made clear that the bill is unworkable and unacceptable. Over three months ago, the Administration issued a Statement of Administration Policy (SAP) that stated that the House bill "falls far short of providing the Intelligence Community with the tools it needs to collect effectively the foreign intelligence information vital for the security of the Nation" and that "the Director of National Intelligence and the President's other senior advisers would recommend that the President veto the bill." We adhere to that view today.

The House bill has several grave deficiencies. First, although numerous senior intelligence officials have testified regarding the importance of affording liability protection for companies that assisted the Government in the aftermath of September 11, the House bill does not address the critical issue of liability protection. Second, the House bill contains certain provisions and serious technical flaws that would fatally undermine our ability to collect effectively the intelligence needed to protect the Nation. In contrast, the Senate bill deals with the issue of liability protection in a way that is fair and that protects the national security. In addition, the Senate bill is carefully drafted and has been amended to void technical flaws similar to the ones in the House bill. 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.

The Department of Justice and the Intelligence Community are taking the steps we can to try to keep the country safe during this current period of uncertainty. These measures are remedial at best, however, and do not provide the tools our intelligence professionals need to protect the Nation or the certainty needed by our intelligence professionals and our private partners. The Senate passed a strong and balanced bill by an overwhelming and bipartisan margin. That bill would modernize FISA, ensure the future cooperation of the private sector, and guard the civil liberties we value. We hope that you will support giving your fellow members the chance to vote on this bill.

Sincerely,

MICHAEL B. MUKASEY,
Attorney General.
J.M. MCCONNELL,
Director of National Intelligence.

Mr. DENT. I think that really says it all. Everybody agrees, both Republican and Democrat alike agree that the intelligence product is being degraded. This really isn't a partisan issue. It should not even be an ideological issue. This is simply an issue of common sense, doing what is right for the American people, putting their interests ahead of the special interests.

With that, I would be happy to yield back to the gentleman from Texas, because I know there are others who would like to participate in this colloquy.

Mr. McCAUL of Texas. I appreciate the gentleman's comments. Yet when it comes to national security, it should be bipartisan. We are Americans first, before we are Republican or Democrat, yet there is a special interest driving this agenda, as the gentleman mentioned. The trial lawyers have filed a lawsuit in San Francisco against the telecommunication companies, and I would like for the gentleman from Pennsylvania maybe to expand a little bit on that.

I think most Americans don't quite understand how trial lawyers could drive the agenda with the Democratic leadership such that they will be placing the American people at grave risk and jeopardizing the safety of Americans.

Mr. DENT. What I would respond is that the telecommunication companies at the request of their government were asked to cooperate and help us pursue terrorists. Obviously they have much of the infrastructure that we need to pursue these terrorists.

I would have to put this whole issue under the category of "no good deed goes unpunished," where people who are acting in good faith to help their government are now being sued for their efforts, again to protect the most litigious elements of our society.

Because of that, because of the failure to provide a retroactive immunity as contained in the Protect America Act, when we do not provide that retroactive immunity, we know that these telecommunications can no longer be good partners. Even though they want to be helpful, they can't be. They have to protect themselves from lawsuits.

They have a fiduciary responsibility to their shareholders to protect themselves and their organizations. I think that is really what is driving us.

I would yield back to you, because you have been a distinguished member of the bar, you are a former U.S. Attorney, so you understand these issues probably better than just about anybody in this building.

Mr. McCAUL of Texas. I think we should be thanking these companies for their patriotic service in a time of war, not slapping lawsuits on them or putting the trial lawyers' interests above the warnings of the Director of National Intelligence and the Attorney General. Not just the U.S. Attorney General, but 25 State Attorneys General have signed a letter calling upon this Congress to act and pass the Protect America Act and make it permanent. So I would put more stock in the top law enforcement leaders in 25 of our States and the U.S. Attorney General over the special interests.

Mr. DENT. If the gentleman would yield briefly on that point, in fact my own Attorney General of the Commonwealth of Pennsylvania, Tom Corbett, came down to Washington to meet me and expressly asked me to support the Protect America Act. He too, like you, was a U.S. Attorney, and he was emphatic in his support for this legislation, and seemed a bit incredulous that Congress would not provide these necessary tools to our law enforcement and intelligence officials.

Mr. McCAUL of Texas. With that, I would like to yield to the gentlewoman from Tennessee (Mrs. BLACKBURN) who sits on the Energy and Commerce Committee, which has jurisdiction and deals with a lot of the issues regarding telecommunications companies.

Mrs. BLACKBURN. I thank the gentleman from Texas for his leadership on this issue, as well as the leadership that has come from the gentlewoman from New Mexico and also the gentleman from Pennsylvania. It is an issue that does need to be addressed. I would remind our constituents who are watching that we are talking about the Foreign Intelligence Surveillance Act, FISA. That is what it stands for.

As the gentlewoman from New Mexico said, the changes in technology may mean that someone in the Horn of Africa who is calling in to a Middle Eastern country, their call ends up being routed through this country. What we are talking about is foreign intelligence and talking about getting information, gathering that intelligence that will keep Americans safe. As the gentleman from Pennsylvania said, our constituents are wanting to know, are we in danger? Are we in danger? Where is the next threat? Are you making certain that in our communities, in our homes, in our neighborhoods, in our schools, that we are going to be safe?

We were just discussing a bit about the trial bar and their part in this issue, if you will. In mid-March I noticed an editorial in *Investors Business*

Daily and it was titled "FISA Fix For Lawyers." Not my words, Investors Business Daily from a mid-March issue, "FISA Fix For Lawyers."

Mr. Speaker, that kind of peaked my curiosity, so I read a bit about it. Basically what it goes on to say is that pretty much this bill could be considered an earmark for the trial bar.

Well, I did a little bit of investigating on that issue, once I read that article, Mr. Speaker, and it seems that \$72,440,904 had been given to the Democrats by the trial bar this cycle so far. That was through mid-March. So we will see what else happens with that figure.

But it appears, as we have just discussed the lawsuits that are filed with the Ninth Circuit in San Francisco, that that may have a little bit to do, Mr. Speaker, with why Investors Business Daily would write an article and look at FISA as a fix for lawyers. Certainly something we do not want to do is have the integrity and the security of every single community in this great land of ours compromised in any way, shape or form because of that.

Now, the gentleman from Texas mentioned that 45 days has passed since the Protect America Act expired, and that does cause some question from our constituents. As the gentleman from Pennsylvania mentioned, Attorneys General from 25 different States support the bipartisan Protect America Act, and independent intelligence reports support this.

Mr. Speaker, I think there is indeed a reason. It is because we all know that protecting this Nation and our Nation's interests should rise above partisan debate on this floor. Of course, the bill that was brought to this floor before we departed for our Easter recess was a bill that the leadership knew was not going to go anywhere, but they felt like they had to do something.

Mrs. WILSON mentioned that intelligence is dynamic. I think that is an important part of the debate that we have before us as we talk about FISA. It is indeed dynamic, because it doesn't stay the same. The individuals who are seeking to do us harm do not stay in the same places, nor are their camps nor are their cells stationary or stagnant. Because of that, we have to look at electronic surveillance as going about this a different way.

The gentleman from Texas mentioned the situation that occurred last year with three American soldiers that were kidnapped in Iraq and the wrangling that had to go on to get through the courts, as he said, to get "lawyered up," to get in there and to get a warrant. By that time, 9 hours had passed, and by that time we had one individual who was dead and we still have two who are missing as of this point in time.

So, looking at 21st century technology, understanding how that technology works on a global basis, and understanding that if we are to stay

ahead of the game on this, Mr. Speaker, it is imperative, it is imperative, that we realize that our enemies are using satellite phones. They are not using rotary phones. They are using text messages. They are not sending telegrams.

□ 2030

They are moving constantly; they are not in the same place. And it is imperative that we adjust our laws so that we have the ability to stay ahead of them, and ahead of their desire to do harm to us, our constituents, and our great Nation.

Mr. MCCAUL of Texas. I thank the gentlelady. And I couldn't agree more that real-time intelligence is the best weapon we have. We can get the intelligence; but if it is not in real-time, it endangers our ability to protect the American people, as the gentlelady pointed out with the three American soldiers from the 10th Mountain Division who, unfortunately, one now is no longer alive and two are missing.

But I think it is important to give this an historical context and maybe take you back to a gentleman named Ramsey Yusef who came into the United States in 1992. He was detained; but because there wasn't enough detention space at the time, they let him go. And, from there, he conspired with the first al Qaeda cell in New York to take down the Twin Towers. And the idea of the plot was that one tower would fall, toppling over the other, and bring down the symbol of the economic superpower. They got a Ryder van, they loaded it up with explosives, went into the underground parking garage, and blew it up. Fortunately, the Towers survived that day. Although several people were killed, they didn't achieve that goal. That day would come later.

Ramsey Yusef escaped afterwards, went to Islamabad where he was in Pakistan, the Philippines. Then he hooked up with his uncle Khalid Sheikh Mohammed. It is all in the family. Khalid Sheikh Mohammed, we would find out, would be the mastermind of September 11th. When they talked about in the mid-1990s flying airplanes into buildings, wouldn't it have been good to have that real-time intelligence? They talked about that. They talked about how they could take down the United States of America. And when Ramsey Yusef was finally arrested, he was arrested in a hotel room in Islamabad, they found something very eerie. And I have worked with the FBI agents who arrested him, and it always left a very chilling sort of view in my mind, and that was, they found about a dozen baby dolls and these baby dolls were stuffed with chemical explosives. Mr. Yusef gives you great insight into the mind of the terrorists: Simple, brilliant, but evil genius. The same evil geniuses that perpetrated 9/11. He was planning to take those baby dolls on airplanes and blow them up. Of course, with the London arrests, later we would find they were back to their

same game of using chemical explosives to blow up airplanes. Fortunately, our intelligence stopped that plot against the United States.

But we all know what happened on September 11th. We also know there was a secret meeting that took place overseas, and that the CIA was possibly aware of two of these people entering our country. And at that time, the left hand didn't know what the right hand was doing all the time because the criminal division couldn't talk to the foreign counterintelligence division in the FBI. And I will never forget a quote from an FBI agent, because his words prior to 9/11 about his frustration apply the situation that I find and I think we find ourselves here in the House.

He wrote to FBI Headquarters, which was a gutsy move for a line FBI agent, and he said, "Someday, someone will die, and the public will not understand why we were not more effective at throwing every resource we had at certain problems, especially since the biggest threat to us now, Osama bin Laden, is getting the most protection."

We are not throwing every resource that we can now at this problem. We are turning a blind eye to this problem. And if American blood is spilled while our watch is down, while we have allowed this Act to expire, that blood will be on the heads of Members of Congress who did not allow this to go to the floor for a vote. And, yes, the foreign terrorists now are getting protection. They are getting constitutional protection that the FISA statute never intended for them to get in the first place.

With that, I would like to yield to the gentlelady from New Mexico who is on the Intelligence Committee, Ms. Heather Wilson.

Mrs. WILSON of New Mexico. I thank my colleague from Texas.

One of the things that I think is important for people to understand is the importance of intelligence in keeping this country safe. In any war, I think intelligence is underestimated; and the reason is that we see the old newspaper headlines of the victory of the Navy at Midway, but you don't learn until years after that it was the breaking of the Japanese code that allowed our ships to be in the right place in the first place. We see the tremendous success of the Battle of Normandy, but we never knew until years later when it was finally declassified that we had broken the German code.

So intelligence is often underrated. But in the war on terror, trying to prevent the next terrorist attack, intelligence is even more important than it ever was in the Cold War.

I served in the Air Force during the Cold War, and the great thing about the Soviets was that they were certainly easy to find. They were easy to find, or as the military would say, they would have been hard to fix, easy to find. They had the same exercises at the same time of year using the same barracks and the same rail lines and

the same radio frequencies. We knew where they were. They would have been extremely difficult to defeat had they ever attacked the West, but we knew where they were.

When we are fighting against terrorism, the problem is completely reversed. If we can find them, we can stop them. The difficult part is finding them. It is more like a Where's Waldo problem, you know, the cartoon books where you get all of these pictures and you are trying to find the little guy hidden in among all the rest of the clutter. Terrorists generally use commercial communications. They have no territory. They are hiding in the civil population, hiding in plain sight as it were. So, the intelligence problem is the most important and most difficult problem.

All of us remember where we were the morning of 9/11. We remember who we were with, what we were wearing, who we called first, what we had for breakfast. But very few Americans remember where they were the day the British Government arrested 16 people who were within 48 hours of walking onto airliners at Heathrow and blowing them up over the Atlantic. If they had succeeded, more people would have died that day than died the morning of 9/11; but you don't remember it because it didn't happen, and it didn't happen because British, American, and Pakistani intelligence were able to uncover the plot and arrest those who were going to carry it out before they had an opportunity to.

Good intelligence allows us to prevent another terrorist attack, and electronic surveillance is one of our strongest intelligence tools. The Protect America Act just allowed Americans to listen to foreigners in foreign countries without a warrant. If we don't have that authority, it is sometimes impossible to get to the standard required to get a warrant. It is almost a waste of time. It is an incredible frustration for our people who are working in intelligence.

I mean, you think about this. If you are going to get a warrant on somebody who is a narcotics trafficker in Chicago, you can send the FBI out to talk to their neighbors; you can go to their place that they are working; you can talk to their landlady. You can develop probable cause for a warrant. But if you think you have got somebody on the Horn of Africa who is affiliated with al Qaeda, you can't send the FBI to talk to their neighbors. Sometimes you can't reach that standard of probable cause. So, intelligence doesn't get collected against people who are foreigners in foreign countries who have no rights at all under the Constitution of the United States, and the people who are hurt by that are the American citizens we are failing to protect.

The majority of this House wants to pass a bipartisan bill that has already cleared the Senate that would make the provisions of the Protect America Act permanent, and the Democratic

leadership of this House is blocking consideration of that bill, to the detriment of the people of this country.

I yield back to the gentleman from Texas.

Mr. MCCAUL of Texas. I thank the gentlelady for her eloquence on this issue. And I think it is worth repeating again that we are talking about foreign targets in foreign countries overseas. I think the American people want us to be listening to what al Qaeda has to say. In fact, I think they expect that, and I think they would be shocked if they learned that our capabilities were put in jeopardy because of partisan politics and special interests. It is irresponsible. And, as the gentleman from Pennsylvania has often said, it is a dereliction of our duties here in the House to protect and defend the American people from enemies overseas.

The gentlelady talked about the war with the Soviets. In some ways it was a more predictable enemy, and the concept of mutually assured destruction applied to the Soviets because they valued their own life. The concept of mutually assured destruction does not apply to the Islamic jihadists, because they won't think twice about blowing themselves up if it means they can take other lives, particularly American lives. They won't think twice about flying airplanes into buildings and killing almost 3,000 people, including themselves, because, in their extreme fanatical view, that means the rewards in heaven are greater. That is the mindset of the enemy that we are working with.

Satellite imagery was very important in the Cold War. But in this war, this war on terror, intelligence is the best weapon that we have. And if that is taken away from the intelligence community, as the Democratic leadership is trying to do, if they take that capability away, as they did when they allowed the Protect America Act to expire, they are tying the hands of our intelligence community to better protect the United States of America. And I believe that is treasonous.

With that, I yield to the gentleman from Pennsylvania.

Mr. DENT. I want to thank both of you for your eloquence on this critical issue. And with all these references to 9/11, I really believe it is important that we take seriously what this Congress did after 9/11. It created a commission, the 9/11 Commission, to make recommendations about how we can improve upon our Nation's homeland security and our national security. They made many recommendations; we are familiar with many. And, indeed, when the 110th Congress was first organized a little over 1 year ago, we were told by the new leadership under Speaker PELOSI that fulfilling those 9/11 Commission recommendations was a top priority. As it should be. And it is time that we equate those words with action. As you and I have both said, failure to do that is a dereliction of duty.

I believe that we have it within our means now to do what that 9/11 Commission wanted us to do, and I believe passing the Protect America Act is entirely consistent and compatible with what those folks who wrote the 9/11 Commission want us to do. And I believe that, again, failure to pass the Protect America Act really contravenes and contradicts what the 9/11 Commission stands for.

We also talked about this issue of liability and who is getting protected. One thing I guess I find particularly appalling is that, because of this approach to homeland security and national security to intelligence, many of our intelligence officials and officers have been forced to buy personal liability insurance to protect themselves from lawsuits from us, from Congress, from others who may choose to sue them. The phone companies are getting sued. Why not sue the intelligence officials? So what is happening is they are worried about being sued, and that is why they have had to find this type of insurance.

Mr. MCCAUL made a very interesting observation. He read an interesting quote a few minutes ago by that FBI agent, and I would like to put that quote into some context. In fact, at the time of the PATRIOT Act reauthorization a little over 2 years ago, there was an article written in the Wall Street Journal by a woman named Debra Burlingame. Who is Debra Burlingame? I guess she is best known because of her brother, Chic Burlingame, who was the pilot of one of the planes that crashed that day on 9/11, 2001 into the Pentagon. She had written this in the Wall Street Journal on January 30, 2006: Critics contend that the PATRIOT Act was rushed into law in a moment of panic. And there is relevant to our PAA here. The truth is, the policies and guidelines it corrected had a long troubled history, and everybody who had to deal with them knew it. The wall was a torturous set of rules promulgated by the Justice Department lawyers in 1995 and imagined into law by the Foreign Intelligence Surveillance Act Court, or the FISA Court, conceived as an added protection for civil liberties provisions already built into the statute that was the wall and its real world ramifications that hardened the failure to share culture between agencies, allowing early information about 9/11 hijackers Khalid al-Midhar and Nawaf al Hashmi to fall through the cracks. More perversely, even after the significance of these terrorists and their presence in the country was known by the FBI's intelligence division, the wall prevented it from talking to its own criminal division in order to hunt them down.

□ 2045

In other words, the FBI criminal division and the FBI intelligence division couldn't communicate because of what was going on pre-9/11.

"Furthermore," she writes, "it was the impenetrable FISA guidelines and

fear of provoking the FISA court's wrath if they were transgressed that discouraged risk-averse FBI supervisors from applying for a FISA search warrant in the Zacarias Moussaoui case." And we all remember him.

"The search, finally conducted on the afternoon of 9/11, produced names and phone numbers of people in the thick of the 9/11 plot, so many fertile clues that investigators believe that at least one airplane, if not all four, could have been saved."

That is what Debra Burlingame wrote.

Further on in that article where Mr. McCAUL began, and this is the woman whose brother was the pilot who crashed into the Pentagon on 9/11, she concludes by saying: "Three weeks before 9/11, an FBI agent with the bin Laden case squad in New York learned that al-Mihdhar and al-Hazmi were in this country. He pleaded with the national security gatekeepers in Washington to launch a nationwide manhunt and was summarily told to stand down. When the FISA Court of Review tore down the wall in 2002, it included in its ruling the agent's August 29, 2001, e-mail to FBI headquarters," and I am going to restate what you just stated a few moments ago. The quote was from this FBI agent: "Whatever has happened to this—someday someone will die—and wall or not—the public will not understand why we were not more effective in throwing every resource we had at certain problems. Let's hope that the National Security Law Unit will stand behind their decisions then, especially since the biggest threat to us now, bin Laden, is getting the most protection."

Not my words, and how can anybody not be moved by this? How can anybody somehow think that our own FBI is a greater threat to the American people than is al Qaeda or Osama bin Laden?

Mr. McCAUL, you are an attorney. You understand this issue well. We want to protect everyone's civil liberties, and at the same time we have legitimate security threats we must deal with.

Mrs. WILSON of New Mexico. I think my colleague from Pennsylvania raises a good point. What are the protections for America's civil liberties, and there has been a lot of misinformation out there about the protections in the Protect America Act for American civil liberties. In fact, in the Senate bill that we would like to have a vote on here in the House, the civil liberties protections for Americans are more than exist under current law, under the current FISA law.

What are those protections? First, you have to have a warrant to target anyone in the United States, American or foreigner. So you must have a warrant if someone is reasonably believed to be in the United States.

It is a felony to do what some have called reverse targeting. In other words, you think somebody may be af-

filiated with a terrorist group. They are in the United States and they have a brother in Lebanon. So gee, let's wiretap their brother in Lebanon and maybe we can pick up some of their conversations back to the guy in the United States. That is a felony. You can't do that. You have to have a warrant if your target is reasonably believed to be in the United States, and you cannot do reverse targeting.

It also extends the protection of the Constitution to Americans traveling overseas. This is something that doesn't exist in current law. If I am an American stationed overseas, which I was in a past life, and I in some way bump into American intelligence collection overseas, their procedures in regulations is to "minimize" or "screen out" that information, to destroy information that is of no intelligence value. But the act that has now passed the Senate actually goes further than that. If you are an American overseas, the American government would also have to get a warrant in order to target your communications.

These provisions apply irrespective of the communications technology used. So to collect foreign intelligence over the air on a wire, it doesn't matter. All that matters is whether somebody is reasonably believed to be in the United States or is an American citizen. If they are, you have to go to court and get a warrant. If you do not, if they are a foreigner in a foreign country, we do not extend the protections of the Constitution to them.

Mr. McCAUL of Texas. The gentlelady is correct. The Constitution applies to persons in the United States. The Constitution doesn't apply to foreign terrorists in a foreign country. I think that is the central heart of this debate that we are having here tonight.

As the gentleman from Pennsylvania pointed out, Mr. Moussaoui retained information on his computer that could have helped prevent this from happening. He is a person in the United States; and as such, properly the FBI and the Department of Justice went through the FISA court. The initial FISA application was turned down by the Office of Intelligence Policy Review. We lost critical time in processing that application. My point being, the FISA court is very document intensive, cumbersome and time-consuming.

We should not apply FISA court standards to foreign terrorists in a foreign country when real-time intelligence can stop something like this from happening here in the United States.

You know, when the wall was in place, one intelligence community was aware of these two individuals in the U.S., yet the FBI was not made aware and they could not track them down.

The FISA Court of Review issued an opinion about the wall when it finally struck it down and said that effective counterintelligence, we have learned, requires the whole-hearted cooperation

of all of government's personnel who can be brought to the task. A standard which punishes such cooperation could well be thought dangerous to national security. So a lack of coordination and cooperation is dangerous to national security.

And if we can't work with the private sector, and in fact we cannot obtain this intelligence without the private sector; and if we will subject them to liability and to lawsuits for doing their American patriotism, we indeed will lose the private sector as a partner.

Mrs. WILSON of New Mexico. Would the gentleman yield?

Mr. McCAUL of Texas. I would be happy to yield to the gentlelady.

Mrs. WILSON of New Mexico. Is it true that we depend on telephone companies not only for their cooperation for foreign intelligence, but also in the case of crimes like kidnappings here in the United States? Do we depend on their cooperation there?

Mr. McCAUL of Texas. The gentlelady is correct. What is at grave risk is not only in the war on terror capturing intelligence overseas, but if the private sector would be subject to liability and lawsuits, and they say to the government, "I am not going to cooperate with you anymore," they don't have to. Then we place at jeopardy domestic investigations that could include child predators, organized crime, and a whole myriad of criminal activity in the United States. So this is setting a very dangerous precedent.

Mrs. WILSON of New Mexico. If the gentleman would yield, you are an attorney and have dealt with these things and I haven't. Is it true that a district attorney can go in an emergency situation and say to the telephone company, this is an emergency, we have a kidnapped child, we think we know who did it, will you cooperate with us and we will followup with the paperwork later? Can that happen?

Mr. McCAUL of Texas. The gentlelady is correct. Then you have real-time information that is relevant to a case to stop a criminal act from occurring.

What the Democrat leadership has done in this case is prevented us from obtaining intelligence critical to the safety of the United States overseas in a foreign country.

Mrs. WILSON of New Mexico. Is it reasonable to expect that if these telephone companies get sued for voluntary cooperation, that they will just stop doing voluntary cooperation no matter what the issue is?

Mr. McCAUL of Texas. The grave risk is that they will not cooperate on any investigation, whether it be overseas or domestically, because there is no incentive for them to cooperate with the FBI here or with our intelligence community abroad if we are going to subject them to liability and to lawsuits.

If there is wrongdoing on the part of the government, that is one issue. But

when the telecommunication companies are told that they need to cooperate in the interest of the national security, I don't think we should be slapping them with a lawsuit, we should be thanking them for protecting this Nation.

I want to go back to the gentleman's comments about the 9/11 Commission. After this occurred, we all were scrambling to do everything within our power to prevent this from happening again. The President met with his advisors, and the 9/11 Commission met. And they made recommendations and they talked about connecting the dots. The problem is that we cannot connect the dots, and we are not putting this information together.

What is at risk here tonight, as every hour passes that the Protect America Act has expired, is we cannot collect the dots to connect them.

I would like to draw on a quote, a letter from Attorney General Muskasey and the Director of National Intelligence McConnell to Chairman REYES. He says, "Our experience in the past few days since the expiration of the act demonstrates that these concerns are neither speculative nor theoretical. Allowing the act to expire without passing the bipartisan Senate bill has had real and negative consequences for our national security. Indeed, this has led directly to a degraded intelligence capability."

I don't know about you, but when I read that language from the experts in the intelligence community and our top law enforcement officer, it sends a chill up my spine. We need to pass this bill, and we need to do it now.

Mr. DENT. Again, a powerful quote, the degradation and degrading of our intelligence capacities, stated by a Republican Attorney General and a Republican Director of National Intelligence, but also stated by the Democratic chairman of the Senate Intelligence Committee, that the intelligence product will be degraded as a result of our failure to enact the Protect America Act.

I can't help but note, the gentleman from Texas having served in law enforcement, many of the arguments I just heard you talking about in your colloquy with Mrs. WILSON were also some of the arguments that I heard at the time of the PATRIOT Act reauthorization.

Remember it was being said that somehow our library records were going to be looked into. Several of the 9/11 terrorists made their airplane reservations on public library computers, and they confirmed those reservations on public library computers.

I am not aware that anybody has ever sought a library record under the law. But I also remember, too, after meeting with some folks from the Attorney General's Office, and this is not a classified issue, I remember them telling me that a terrorist, when interrogated, they asked: Why were you constantly on the New York Public Li-

brary computers? His response was they clean their hard drives at the end of the day. Interesting point.

Another issue we heard at the time of the PATRIOT Act had to do with roving wiretaps, a tool I believe you, as a prosecutor, used over the years, and that we use in drug cases against organized criminals. We use that type of method. When we talk about using it for counterterrorism purposes, it seems as if we were creating some new structure. Do you want to address that.

Mr. MCCAUL of Texas. Reclaiming my time, this issue goes well beyond what the gentleman is referring to. This issue goes to our capability to intercept communications from foreign terrorists in foreign countries. Again, I think the American people would like to know what al Qaeda is saying when they conspire to perpetrate something like this. They would like to know what Osama bin Laden is saying, and what his lieutenants are saying.

I know my time is starting to run out.

Mr. DENT. Quickly, the bottom line is we should be listening to this foreign-to-foreign communication of people who are not American citizens who are suspected terrorists because you want to prevent what happened on 9/11 of 2001. For some of us, it was quite personal.

You mentioned what happened in 1993. My cousin spent the whole day on the top of that building, the South Tower, spent the entire day on the roof after what exploded in the basement, the garage of that building.

□ 2100

You know, he was there, also, on September 11, 2001. I remember that, too. He was on the 91st floor of the north tower when the plane entered the 93rd floor. Everybody above him was killed.

And for many of us it's personal. But if we have information, actionable intelligence, I would certainly hope that our counter terrorism officials, that our intelligence officials would do everything in their power to prevent such terrible events like 9/11 from ever occurring.

And again, I just want to state one more time that enacting the Protect America Act will help improve our intelligence capabilities, will protect Americans, and it's time that we get the job done. We have a bipartisan consensus to do it. Let's do it. The time for games is over. It's time to get the job done.

I yield back to my friend.

Mr. MCCAUL of Texas. I thank the gentleman.

Before we passed the Protect America Act, the Director of National Intelligence came to us and he said, "I'm losing two-thirds of the intelligence out there." Well, now with the expiration of the Protect America Act, we can only imagine going back to that scenario. We were going dark in parts of the world. We were losing critical foreign intelligence from our enemy to

better protect this Nation from another terrorist attack.

And to put to you, I think, one of the best quotes I've read, it really puts you in the mindset of who is the enemy and what is the real threat to the United States, I'd like to leave you tonight with the following words. And this is in their words, not mine.

"The confrontation that we are calling for with the apostate regimes does not know Socratic debates, Plutonic ideals, nor Aristotle's diplomacy. But it does know the dialogue of bullets, the ideals of assassination, bombing and destruction, and the diplomacy of the cannon and the machine gun.

The Islamic governments have never and will never be established through peaceful solutions and cooperate councils. They are established, as they always have been, through pen and gun, by word and bullet, and by tongue and teeth."

The words that I just read to you are the words found in the preface of the al Qaeda training manual. They are the words of the enemy. That is what the enemy is telling us. We need to win in this war on terror and stop this enemy and protect the United States from this ever happening on American soil again. It is time to pass a bipartisan Senate bill.

CONGRESSIONAL BLACK CAUCUS MESSAGE HOUR

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

Mrs. JONES of Ohio. Mr. Speaker, it gives me great pleasure this evening to have an opportunity to stand in the well of this wonderful House of Representatives on behalf of the Congressional Black Caucus and our Chair, CAROLYN CHEEKS KILPATRICK.

This evening I will be joined by several of my colleagues to talk about the black community, the African American community, and the economy and the impact that this downturn in the economy has had on the African American community.

Before I go to that subject matter, I just want to take a moment. One of the things that we have an opportunity, as Members of Congress, to do is to travel all around the United States, meeting people who say, oh, we watch you on television, we've seen you on television. And the fact is this weekend I had the opportunity to be in Orlando, Florida, on behalf of my sorority, Delta Sigma Theta. And I met one of the finest families in Orlando, headed by Janet McDowell-Travis and her husband, Michael Travis, son Jordan, who is 10 years old, who drew me this really, really nice card, Janet's mother, Vergnoustene, my soror as well, and Janet's aunt, Aunt Romelda. So, I just want to take a moment this evening, Mr. Speaker, to have an opportunity to