

At a time of economic anxiety, the most important thing is to ensure that growth remains strong, so that opportunities can be creative. If we look at what has been our biggest source of strength in recent months, it has been export-led growth. Over the last year, there have been dire predictions for GDP growth, and every single quarter the numbers have come out much stronger than has been anticipated because exports have made up for softer areas within our own economy.

At the same time, Madam Speaker, imports have ensured that working families have access to the goods they need at prices that they can afford. We are weathering these economic challenges because we are engaging in the worldwide marketplace.

India has been a very important component of that engagement. Our exports to India have doubled in the last 5 years. We are India's largest trading partner and largest investment partner. Trading with India has opened up new doors for American producers, service providers, workers and consumers as well.

But India still has miles to go in its reform process. Tariffs in many sectors are prohibitively high. The regulatory environment is absolutely Byzantine. American investors looking for opportunity in an otherwise ripe environment still confront significant roadblocks to successful investment.

If we are to maximize the benefits of trade with the world's second-largest consumer market, there must be broad, comprehensive reform. Free trade negotiations would provide maximum leverage for encouraging this kind of reform. Whether it's slashing exorbitant tariffs, which average 20 percent and range as high as 210 percent, Madam Speaker, that's a 210 percent tariff, protecting intellectual property, and another thing they have done is ensuring transparency in governance, a free trade agreement would provide the necessary impetus for comprehensive liberalization of their economy.

Many of our FTAs are negotiated with foreign policy concerns chiefly in mind. Our pending FTA with Colombia, for example, will solidify strong democratic institutions for a key ally in a key region, in addition to the economic benefits to both countries.

There are certainly foreign policy concerns associated with a U.S.-India free trade agreement as well. It would provide an opportunity to deepen and broaden our ties with a strong, stable Asian democracy that shares our fundamental values in a challenging region.

But Madam Speaker, the commercial benefits to such an FTA would be considerable. It would open up a tremendous opportunity to build upon our export-led growth and ensure that Americans can take full advantage of the more than 1 billion consumers in the world's second-largest emerging market. With all eyes on the economy, now is the time for the U.S. and India to

begin to pursue comprehensive economic engagement with a free trade agreement.

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Ohio (Ms. KAPTUR) is recognized for 5 minutes.

(Ms. KAPTUR addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

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

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

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

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

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

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

#### THE TRAGIC MISADVENTURE IN IRAQ

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

Mr. SESTAK. Madam Speaker, in the wake of the 9/11 attacks against the United States, I was sent on the ground for a short period of time to Afghanistan. As a Navy admiral, I saw what needed to be accomplished. Eighteen months later, I returned on the ground and saw what had not been done because we tragically changed the focus of our attention and our resources to Iraq.

Now, Afghanistan has become once again prey to terrorists and the Taliban have moved back into the southern ungoverned regions and the provinces.

Because of this failure to have our legal or political or security structures there that we were trying to support be established, we were unable to have economic activity, the education take root so that we would be able to harness the efforts to have livelihoods established and an infrastructure in place, to overcome what General Eikenberry, our U.S. commander who was the NATO commander earlier last year said, "Where the road ends, the Taliban begin."

Secretary of Defense Gates has recently said that we will place 3,000 troops into Afghanistan because of the possible spring offensive of the

Taliban. That is too little and way too late.

We have to be able to bring the infrastructure into those ungoverned regions so the Taliban once again cannot provide a safe haven for al Qaeda, that is presently in a safe haven because of this tragic misadventure in Iraq, within Pakistan.

But more to my point today, I do not understand the criticism of a very good Secretary of Defense, Secretary Gates, that the United States wants to point at NATO and say you have not met your commitment in Afghanistan when, in fact, potentially a little known fact is that the United States itself has not met its own requirement for trainers and mentors of the Afghanistan National Army and the Afghanistan National Police. In fact, we are 63 percent short of our goal. That's 2,400 troops.

It all began in Afghanistan. And if we are to look back there 2 years from now and another tragedy would have been planned by the al Qaeda in another safe haven, whether Pakistan or Afghanistan, how can we say, as a senior commander said, "In Iraq we do what we must; in Afghanistan we do what we can?"

The right strategic template is as Winston Churchill said, "Sometimes it's not enough to do your best; sometimes you have to do what is required."

It is required to ensure that the education, the economic activity, the wells, the reconstruction can be accomplished, but you can only do that in a secure enough environment. That, again, is one of the tragedies of this misadventure of Iraq.

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from the District of Columbia (Ms. NORTON) is recognized for 5 minutes.

(Ms. NORTON addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

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 addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

#### FOREIGN INTELLIGENCE SURVEILLANCE ACT

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

Mr. DANIEL E. LUNGREN of California. Madam Speaker, this afternoon we find ourselves in what only can be described as ominous circumstances.

In 2 weeks, our Nation will no longer be able to conduct critical surveillance

of foreign terrorists located outside the United States. We face this situation because, in order to close what the Director of National Intelligence described as critical intelligence gaps, he had to agree with the Congress the necessary reforms embodied in the Protect America Act would expire in 180 days.

Although this body did adopt follow-on legislation, the majority party's so-called RESTORE Act in November of last year, this legislation imposed additional burdens on the intelligence community which, in my judgment, undermined the essential nature of the compromise reached with Admiral McConnell.

Furthermore, it punted on the critical question of whether retroactive protection would be extended to those communication providers who responded to the call for help from their government in the wake of 9/11. If press reports are accurate, similar ideological currents in the other body threaten to dominate the outcome of this critical issue and potentially the eventual resolution of the larger FISA issue itself, that is, the Foreign Intelligence Surveillance Act issue itself.

There is no issue of greater importance to those of us who serve in this body than the protection of the American people from another catastrophic attack like that we received on 9/11. In fact, this responsibility goes to the very heart of the purpose for which government exists. The very preamble to our Nation's Constitution spells out this obligation to provide for the common defense.

It was for this very reason that on August 5 last year we passed the Protect America Act, which responded to the minimum requirements presented to this body by the Director of National Intelligence, Admiral McConnell.

At the same time, Admiral McConnell described this legislation as necessary in order to "close critical intelligence gaps." He defined the concept of a gap to mean "foreign intelligence information that we should have been collecting."

Admiral McConnell testified before the House Judiciary Committee that prior to the enactment of the Protect America Act this past August we were not collecting somewhere between one-half and two-thirds of the foreign intelligence information which would have been collected were it not for the recent legal interpretations of FISA which required the government to obtain FISA warrants for overseas surveillance.

This is very serious business, because if you look at our challenge from those who would kill us in the name of some sort of distorted view of Islam, we basically have to assess that risk by way of threat, by way of vulnerability and by way of consequence.

With respect to consequence and vulnerability, we have within our property of information, within our store of information, the ability to make those

judgments. In other words, when we look at vulnerability for a particular site, a potential target, we have the information about that target because it is either American owned, privately or governmentally, and we can analyze that and determine what vulnerabilities exist.

Similarly, with respect to the question of consequence, we have that information available as well, because we can make calculations as to a type of attack which might take place, the damage it would do and, therefore, the consequences that would flow from that.

But there is one area of the analysis of risk that is not totally within our information base, and that is the area of the threat. What is the threat? The threat is that which is in the mind of those who would do us harm. It is within the planning of those who would do us harm, and it is within the orders of those who would carry out those attacks on us to do us harm.

That is where intelligence comes into play. Intelligence means gathering information that otherwise is within the authority of those who would do us harm. That means essentially listening in wherever we can on the conversations or communications they may have.

□ 1530

That is the essence of intelligence. That's why it is so important. It is that part of the three-part analysis of risk which is not totally within our information base and therefore that which we have to go out and extract. That's why it's so important.

I am sure that most Americans would agree with Admiral McConnell, a distinguished public servant who headed the National Security Agency in the Clinton administration for 4 years and now serves as our Director of National Intelligence, that the changes contained in the Protect America Act were necessary. Regardless of how one interprets the most recent National Intelligence Estimate concerning Iran, any attempt to attack Admiral McConnell as a tool of the Bush administration would appear to be lacking in any credibility whatsoever.

I would say it is somewhat interesting that when he appeared before our committee, one of the questions asked of him was whether he had it in himself to speak truth to power. There should be no doubt in anyone's mind that Admiral McConnell is a man of honor who, in fact, calls them as he sees them. And, in fact, that's precisely what he has done. According to Admiral McConnell, the Protect America Act has provided us with the tools to close gaps in our foreign intelligence collection. In other words, the law that we passed in August, which necessarily accompanied with it a 180-day sunset as the price of passing it, so, therefore, it is in the law now, that law, as it works, has, in the judgment of Admiral McConnell, provided us with the tools

"to close those gaps in our foreign intelligence collection." This act clarified that the definition of "electronic surveillance" under FISA would not be interpreted to include intelligence directed at persons reasonably believed to be located outside of the United States. Thus, under the Protect America Act, it is not required for our intelligence community to obtain a FISA warrant when the subject of the surveillance is a foreign intelligence target located outside the United States.

Now, critics of the Protect America Act have suggested that the FISA warrant process should be excused only under circumstances where the communication is a foreign-to-foreign communication. The corollary of this argument is that if a foreign terrorist were to contact someone in the U.S., the intelligence community should be required to first obtain a warrant before listening to the conversation.

Now, let's put aside the fact that were Aiman al Zawahiri to place a telephone call to a sleeper cell, let's say in San Francisco, perhaps that might be the most worrisome of circumstances, and we want to be assured that we would collect that information.

But focusing purely on the practical legal considerations raised by the opponents of the Protect America Act, this formulation is simply unworkable. Why? The problem is that we do not target both ends of the conversation or communication, because we can't. Rather, we target only one end of the communication or conversation, the foreign person located outside the U.S. When a foreign terrorist in Islamabad places a call, the known factor beforehand that we have is that he or she is the one making the call. In the normal course of things, to whom the call is being made is unknown prior to the time that the call is made. Before the call is placed, it is simply not technically possible to note whether the call will go to another foreign destination, say Frankfurt, OR to someone somewhere in the U.S.

The attempt to legislate warrant requirements on foreign individuals outside the U.S. based on whether they place a call to another foreign destination or to a U.S. destination would create an impossible nightmare for our foreign intelligence operations. Admiral McConnell made this very point in questioning during the Judiciary Committee hearing. The admiral responded that "when you're conducting surveillance in the context of electronic surveillance, you can only target one end of the conversation. So you have no control over who that number might call or who they might receive a call from. The Protect America Act addressed the problem, while at the same time maintaining the longstanding prohibition against targeting U.S. persons in the U.S."

The Protect America Act was a targeted response to a specific challenge. However, if we're presented with a problem, which has once again brought

us to the House floor this afternoon, by its terms, as I mentioned before, the Protect America Act is scheduled to expire on February 1, about 2 weeks from today, but with a lot fewer legislative days available.

It's interesting, the 5-day work week has gone by the boards; we canceled any consideration of votes tomorrow; we are able to get out of here in the afternoon in good time. That's good for Members who had to leave because of the weather. But what is the reason we're here? The reason we're here is to do the people's business. And is there anything more important than protecting the American people from attack? What can be more important than working out an answer to the FISA problem?

Why is it a problem? Because on February 1 the currently law expires, we go back to the old law, which Admiral McConnell testified under oath did not allow him to gather between 50 percent and two-thirds of the information we otherwise would gather from those who are suspected terrorists or terrorist affiliates around the world.

Unless you think the Islamic radicals who are plotting to kill us are for some reason going to have a dramatic change of heart before the first week of February and, therefore, we don't need the law, this doesn't make a whole lot of sense. If that is the intention here, then maybe this body should, in the spirit of wishful idealism, pass legislation renouncing wars as an instrumental policy and hope the whole world will follow it. Unfortunately, Osama bin Laden and al Qaeda are not likely to be assuaged any more than Hitler was in the decade following the signing of the Kellogg-Briand Pact outlawing war. No, these people made it very explicit they want to come here, or go anywhere, and kill us; and there is no indication that's going to change within the next 2 weeks.

I don't want to be or appear unfair to the leadership of this body, for they do recognize in their RESTORE Act, which would repeal the core provisions requested by Admiral McConnell, that the need to defend our Nation will require a commitment beyond 180 days. Their new proposal has a sunset date which is approximately 2 years from now. Now, when I first saw this, my immediate reaction was, again, one of bewilderment. Such a truncated timeframe would require a great deal of optimism concerning the conduct of the war against Islamic radicalism by the Bush administration. On reflection, this did not seem to be a likely explanation. For even President Bush has repeatedly stressed that we are engaged in a prolonged battle with those who would seek to kill us.

So an alternative explanation of the short sunset might be that the nature of the threat is such that the next occupant of the White House, whoever that might be, will have it in their power to bring an end to terrorism's war on us within 10 months of their in-

auguration. This, to put it mildly, is quite a leap of faith. However, it appears that FISA has become a faith-based initiative in the 110th Congress. For if there is any truth to recent press accounts, it appears that one of the proposed solutions to the current stalemate over FISA in the other body would be to extend the terms of the Protect America Act for an additional 12 to 18 months. The superficial logic of such an extension would enable the next administration to change the direction of foreign intelligence gathering. Despite the fact that the vernacular of "change" has come to dominate the race for the White House, I would suggest it has little or no relevance to the challenge posed by terrorists and their network.

One thing is abundantly clear, Madam Speaker, that terrorists are not going to change their objective. Our policy as a Nation must begin with the recognition of reality. However inconvenient or discomfiting it may be, we must recognize that meeting the challenge posed by those who seek to kill us is going to be a long-term challenge. It will, therefore, require a long-term investment in our security. We can't just be thinking about 6 months or 12 months or 18 months or 2 years. The gravity of the challenge that we face requires a commitment which is commensurate with the serious nature of the threat.

There is absolutely no excuse for this failure to pursue a permanent reauthorization for intelligence measures which are critical to the safety of the American people. We must send a clear message to the terrorists that we understand the nature of their struggle. There must be no doubt in their minds that we will never forget what they've done, or that we are committed to the long haul.

There is no excuse for this body not providing Admiral McConnell with the tools he has asked for and doing so on a permanent basis. We know this policy of fits and starts isn't going to satisfy the leftist blogosphere anyway. And more importantly, it undermines the necessary confidence of those in the intelligence community that there will be a long-term continuity in the law.

Unfortunately, the majority party's RESTORE Act, which passed this Chamber last November, did not reflect what Admiral McConnell and the Intelligence Committee told us it needs as a minimum. The idea that a court order should be required before surveillance can take place against a foreigner overseas is precisely the thing that Admiral McConnell warned against and which he said had made it impossible for him to collect that necessary intelligence.

While my friends on the other side of the aisle are fond of the rejoinder that they only require a basket warrant under their version of the law, that does little or nothing to respond to the admiral's concern. For even if it is a basket, the intelligence community is

going to have to identify every piece of fruit in that basket. In the real world of intelligence, this is simply unworkable.

And what is worse, the language found in section 282 of the majority party's RESTORE Act creates even additional problems. The language that was passed in this body includes a section entitled "Treatment of Inadvertent Interceptions." Now, this deals with a situation where the intelligence community believes in good faith that they are dealing with a foreign-to-foreign communication, but inadvertently they capture a communication that deals with a foreign-to-domestic call. And the language in the majority party's act says that you cannot use that information for any purpose; cannot be disclosed, cannot be disseminated; cannot be used for any purpose or retained for longer than 7 days unless a court order is obtained or unless the Attorney General determines that the information contained within indicates a threat of death or serious bodily harm to any person.

Now, this means simply that if we have a conversation or communication involving Osama bin Laden on one hand and someone in the United States, we didn't know he was going to call the United States beforehand, but we now have captured that communication and there is no indication that what is said or contained in that communication concerning a threat of death or serious bodily harm to any person, but in that conversation something indicates where Osama bin Laden happens to be at that time or where he is going to be in a very short period of time, we couldn't use that information for any purpose unless we went through a process of finding the Attorney General, having the Attorney General determine that the information contained within indicates a threat of death or serious bodily harm to any person.

And, actually, the Attorney General would have to break the law to make that finding because all the information indicates is where Osama bin Laden is. He is not at that time making any threat against anybody. Now, simply put, that's nonsense. That's not the way we handle legal wiretaps in the United States involving someone who is, let's say, a Mafia member. If you have a wiretap on someone who's a Mafia member and he calls someone who is not also a target and that communication indicates where the Mafia member is or he's about to be and you want to capture him, you can use that information; you can use that information for any purpose.

But we don't allow that here in this bill, which means that Osama bin Laden or another terrorist has greater protection under this law as passed by this House, the majority party's bill, than an American citizen who is accused of a crime in the United States. That makes no sense.

Now, to be fair, the majority responds to this criticism by saying that

language is found in section 22 of the bill which provides this: it would not “prohibit the intelligence community from conducting lawful surveillance necessary to protect Osama bin Laden or any other terrorist or terrorist organization from attacking the United States.” That’s their catch-all; it takes care of the problem. But it does not. Why? The problem with this logic is that the qualification that the surveillance must be “lawful” is obviously affected by what is found elsewhere in the law, including the language found in section 282 that I just discussed. Thus, by its own terms, any assertion we will be able to listen to the conversation of Osama bin Laden, as I just suggested, must be read in light of the bill and, therefore, would not allow us to act in a timely fashion.

Not only did the majority party’s legislation, which passed this body in November, fail to address the needs of the intelligence community, it also added insult to injury by throwing under the bus those telecommunications providers who responded to the call of their government after 9/11. And if the press reports are true, the issue of liability protection for these companies is one of the major sticking points of FISA in the other body.

Now, let me suggest that the failure of Congress to address this liability issue will have telling consequences, not only for those companies who came to the aid of their country at a time of great peril, but for our Nation as well.

Failure to act on this critical issue would send this message to the American people: if you are stupid enough to respond to our government when our fellow citizens are threatened by a cataclysmic attack, the very government which sought your help will not be there for you when the ideologues come after you with lawsuits. You might say that this is the majority’s position on the matter, the reverse Good Samaritan act.

□ 1545

Do you know what the Good Samaritan law is? It’s a law where we grant immunity upon a doctor who comes upon an automobile accident, immunity from prosecution. Why? Because we think it is better to have him or her attempt to help someone that they come upon at the time of an accident and not have to be worried about a lawsuit later on. Now, does this sometimes allow a doctor to screw up, a malpractice, and not be sued? Yes, it does. But we made the judgment that on balance it is better to have people coming to the aid of their countrymen, coming to the aid of someone who is in need, and here we have said don’t dare come to the aid of your country because afterward you might be sued.

When I was a young person learning how to type, we used to type something that said, “Now is the time for all good men to come to the aid of their countrymen.” That was the way you learned to type. We’d have to change

that now: “Now is the time for all good people not to come to the aid of their countrymen unless they have got a lawyer and enough money to defend themselves against subsequent lawsuits.” This would be a terrible precedent for future generations with respect to future conflicts, which, if history is any guide, are certain to occur. The failure to step up to the plate on this issue can only serve to erode our national ethos and a willingness to respond to future crises.

It is time, Madam Speaker, to transcend ideology and to do the right thing. And this has nothing to do with what you think of President Bush. It has nothing to do with what you think about the war in Iraq or the larger war on terrorism. It’s not a Republican or a Democratic issue. We’re going to have a change of administrations in about a year from now, and whoever that President might be, we must not do anything which would detract from his or her ability to marshal all the resources and support necessary to defeat the enemies of our Nation. The new administration is going to need to call on the help of all Americans, including companies like those whose only offense was to respond to the appeal of the Nation in the aftermath of the tragedy of 9/11 by seeking to help prevent its occurrence.

This ideologically driven abandonment of those who relied on the word of their government following the worst attack on our Nation since Pearl Harbor hardly qualifies as a profile in courage. If there is any culpability to be found from the safe vantage point of 20/20 hindsight, it’s not with the communication provider. Rather, if any fault is to be found, it is with the government itself, and the proper recourse lies within the political process. That’s why we have elections. On this issue, it is my belief that the American public will overwhelmingly understand the unfairness of walking away from those who responded when the memory of over 3,000 dead Americans was the only known fact at the time. Perhaps it is this reality which makes the lawsuit option more appealing than the normal remedy of the democratic process.

It is indeed ironic that at a time when such respect has been accorded to the Greatest Generation, and appropriately so, in my estimation, we would through our inaction eschew the ethos of service to our country after it has been attacked. It is particularly odd in the light of the fact that there was grave concern that we would be hit again. In fact, you will all recall that this fear was so prominent that a Member of the other body temporarily closed his office. This was the environment produced by 9/11, and we should not reward those who rose to the defense of their country with ingratitude and the prospect of lawsuits. For in the end, if we are to prevail against the terrorists, a tireless, relentless commitment much like that of the generation before will be required. I would

hope we would send a message to all who were asked to take a stand to protect our citizens that we will likewise be with you.

There is a serious misconception about what is allowed under the Protect America Act, which is about to expire. In her statement in support of the majority party’s RESTORE Act, which made those changes in the compromise reached by Admiral McConnell I spoke of before, the Speaker observed this: that “all of us want our President to have the best possible intelligence, our President and our policymakers, so they can do the best possible job to protect the American people. But no President, Democrat or Republican, should have the authority, to have inherent authority, to collect on Americans without doing so under the law.”

Let me point out there is absolutely nothing in the Protect America Act which would allow the President to target Americans or U.S. persons outside of the law. The Protect America Act did nothing to change this aspect of law which has existed since 1978. The problem addressed by the soon-to-expire Protect America Act related to changes in technology which led to gaps in our ability to listen in on conversations by foreign terrorists outside the U.S. This stifling of the capability of our Nation’s intelligence community was unrelated to any other considerations envisioned by the Foreign Intelligence Surveillance Act in 1978.

In short, the definition of “electronic surveillance” constructed almost 28 years ago has not kept pace with changes in technology. When FISA was enacted, almost all international communications were wireless and almost all local calls were on a wire. Over time the evolution of our telecommunications technology has reversed this state of affairs, has turned it upside down. Today most intelligence communications are transmitted by wire. Even though most international communications were not considered to be subject to the FISA Act in 1978, now they are subject to the FISA warrant requirement simply because they are transmitted by wire. That clearly was not the intention of the law. Thus, changes in technology have brought communications within the scope of FISA which Congress did not cover in 1978. Now, this is simply no way to operate in the age of weapons of mass destruction where terrorists are seeking to obtain them. Our intelligence policy must be made by policymakers, not by technological default.

Madam Speaker, the adoption of the Protect America Act last August was designed to address this very issue and to assure that, if Osama bin Laden were to place a call into the United States, there would be no obstacle placed in the way of our ability to uncover any murderous scheme aimed at innocent Americans. Admiral McConnell told us what he needs to prevent Osama bin Laden from succeeding.

However, the majority party in this body has made a dramatic U-turn with the so-called RESTORE Act. Their bill responds to Admiral McConnell with the rebuff that “we know better and that we will substitute our own judgment for that of the Director of National Intelligence.”

Now, please don't misunderstand me. As a Member of this body, I am the first to defend our right to exercise our oversight responsibilities as a coequal branch of government. Those in this body certainly have the prerogative to pursue a different course concerning our national security policy. However, based upon Admiral McConnell's expertise and service in the last two administrations, one Democrat and one Republican, I would suggest that those who seek substantive changes in what he has told us to be necessary should face a heavy burden of proof.

This burden of overcoming the expressed needs of our intelligence community should be considered all the more difficult in light of the fact that the impact of the Protect America Act on the privacy rights of Americans is itself de minimis. There are two things I would hope we would keep in mind:

First, if the intelligence community targets someone inside the United States, they must first obtain a court order from the FISA Court under the law that we passed in August, continuing what has been the case before. Secondly, if the intelligence community surveils a communication where both ends of the communication are in the United States, the intelligence community must obtain a FISA Court order. Furthermore, if Osama bin Laden calls a U.S. person within the United States, the end of the conversation conducted by the U.S. person would have to be minimized, and that's a term of art, minimized under the existing procedures of the 1978 act. Let me once again emphasize the minimization process which is applied in cases where information has been inadvertently obtained from a U.S. person is not only in the original FISA statute but is something that we have been familiar with on the criminal side for decades as well. It is not something we dreamed up for the FISA Act. It is not something we put into the Protect America Act. It is something that has been within the fabric of the U.S. criminal justice system for at least five decades.

The Protect America Act does nothing to alter the definition of “electronic surveillance” under the 1978 act which determines when a FISA warrant is required. So under the scenario where a U.S. person located in the U.S. is involved, nothing would change. The minimization requirements under the law remain intact and are intact today.

Finally, the Speaker's comment about the “inherent authority of the President” would not and could not be affected by either the Protect America Act or the leadership's attempt to alter the compromise with Admiral McCon-

nell under the RESTORE Act. Such rhetoric has no relevance to this debate. The majority's law, the majority's bill, the RESTORE Act, which passed this body on November 15, represents not so much a rejection of the claims of executive authority as it does the rejection of the actions taken by this House as recently as August 2007. The language of the majority party's bill places burdens on the intelligence community which have nothing to do with the protection of civil liberties of Americans.

As a matter of law, the FISA appeals court set the record straight in its decision of *In Re Seals* by stating that all courts, to have addressed the issue of the President's inherent authority, have “held that the President did have inherent authority to conduct warrantless searches to obtain foreign intelligence information.” Not some courts, not a court, not just the FISA appeal courts, but all Federal courts have so found. Nothing does or could alter the President's inherent authority under the Constitution. So it's not pertinent to this debate.

And finally, the Speaker made the assertion that the majority party's bill protects Americans by providing the Director of National Intelligence with the flexibility he has requested to conduct electronic surveillance of persons outside the United States.

Now, this is the most puzzling of all. Why would Admiral McConnell be happy with legislation which has the effect of replacing what he sought as recently as August of this last year? If the claim were true, it would in essence place Admiral McConnell in the position of opposing himself. However, it's not necessary to engage in speculation because the admiral has been the most vocal defender of the agreement reached by Congress in August. In fact, this is what he said to the Judiciary Committee of the other body:

“The Protect America Act, passed by the Congress and signed into law by the President on August 5, 2007, has already made the Nation safer by allowing the intelligence community to close existing gaps in our foreign intelligence collection.” He goes on: “After the Protect America Act was signed, we took immediate action to close critical foreign intelligence gaps related to the terrorist threat, particularly the preeminent threats to our national security.”

It sure sounds like an endorsement to me. As a matter of fact, it suggests that if we get rid of the provisions of the Protect America Act, as suggested by the majority, that we would be opening up the foreign intelligence gaps that we had previously closed. Why anyone would think the admiral would support legislation which would do this is a puzzle, to say the least.

Now, why is all this so important? The manner in which we approach FISA is of such critical importance because of its direct connection with the larger question of homeland security. I

think we ought to do whatever is necessary and is constitutional and lawful to prevent another attack against our homeland, but we should not put ourselves in the position of having to get it right every time. Perfection is not possible in this world. Overseas intelligence collection is absolutely a critical component to developing a successful homeland security strategy.

The relationship between foreign intelligence and the protection of our homeland is very real. Here's how Admiral McConnell explained it to our committee:

“In the debate over the summer and since, I have heard individuals from both inside and outside the government assert that threats to our Nation do not justify this authority,” that is, the authority he asked for. “Indeed, I have been accused of exaggerating the threats that face our Nation. Allow me to attempt to dispel this notion. The threats that we face are real and they are indeed serious. In July of this year, we released a National Intelligence Estimate, commonly referred to as an NIE, on the terrorist threat to the homeland. . . .”

In short, these assessments conclude the following: The United States will face a persistent and evolving terrorist threat over the next 3 years. And let me just parenthetically mention the reason why it's limited to 3 years is that is the limit of the NIE's reach.

The main threat comes from Islamic terrorist groups and cells, especially al Qaeda. Al Qaeda continues to coordinate with regional terrorist groups such as al Qaeda in Iraq, across North Africa, and other regions. Al Qaeda is likely to continue to focus on prominent political, economic, and infrastructure targets with a goal of producing mass casualties, visually dramatic destruction, significant economic aftershock, and fear among the United States population.

□ 1600

These terrorists are weapons-proficient, they are innovative, and they are persistent. Al Qaeda will continue to seek to acquire chemical, biological, radiological, and nuclear material for attack, and they will use them, given the opportunity.

Now this is the threat we face today, and one that our intelligence community is challenged to counter. This is the real issue. This is the 800-pound gorilla in the room, if you will, and it remains the central question for us. How do we best protect the American people from another cataclysmic attack? As the National Intelligence Estimate makes clear, those who seek to kill us continue in their resolve to once again inflict mass casualties upon our Nation. The threat is still here. Although we have been successful in thwarting another attack since 9/11, there are no guarantees in this business.

Independent sources such as Brian Jenkins of the Rand Corporation have stressed that our intelligence capability is a key element in our effort to

protect our homeland. He says this: in the terror attacks since 9/11, we have seen combinations of local conspiracies inspired by, assisted by, guided by al Qaeda's central leadership. It is essential that while protecting the basic rights of American citizens, we find ways to facilitate the collection and exchange of intelligence across national and bureaucratic borders.

Again, the development of a comprehensive homeland security strategy cannot be conceived in isolation from the need for surveillance of terrorists overseas. The Director of National Intelligence has told us what he needs and, unfortunately, that is not encompassed by the RESTORE Act, which passed this body in November. The expiration of the Protect America Act on February 1 will leave us without the minimum acceptable threshold of protection negotiated with Admiral McConnell last August.

The gravity of the potentially cataclysmic consequences of a failure to get it right presents a threat not only to our national security but the protection of our rights as Americans. Anyone concerned, and I hope that is everybody, about the protection of civil liberties should be most alarmed about the potential consequences of a successful terrorist attack on the United States with weapons of mass destruction. This is the real threat to civil liberties acknowledged by the U.S. Supreme Court in the Keith case when they noted that were the government, that is the U.S. Government, to fail "to preserve the security of its people, society itself would become so disordered that all rights and liberties would be endangered."

In like manner, Brian Jenkins notes that several national commissions convened both before and after 9/11 reached the same conclusion. All agreed "that the United States has to prepare for catastrophe." They also warn that "national panic in the face of such threats could imperil civil liberties."

Finally, Mr. Speaker, the 9/11 Commission itself issued the following observation concerning the relationship between national security and civil liberties: "The choice between security and liberty is a false choice, as nothing is more likely to endanger America's liberty than the success of a terrorist attack at home."

Mr. Speaker, there's nothing more important for us to confront than the expiration of the existing FISA law on February 1 of this year. I would beg us, as a collective body, both the House and the Senate, to come together to work out an answer to this problem, and respond to the request by Admiral McConnell for us to continue to give him those tools necessary to gather that information so that we cannot only know what the terrorists want to do, but to allow us to take timely action to prevent them from succeeding.

A COLD WAR ERA STATUTE IN A WORLD OF WMDs

The changes made by the Protect America Act responded to the needs of our intelligence

community. That act meets our national security needs without in any way departing from the framework of the original FISA statute. At the time of the adoption of the 1978 act, our Nation was in the midst of a cold war with the Soviet Union. FISA was designed to accommodate the need to intercept overseas communications without prior court approval. The failure to capture such communications—including those coming into the United States—was recognized as potentially damaging to our national security.

Now, 29 years later, our adversary operates undeterred by balance of power calculation, and its surreptitious means of operation are conceived with the express purpose of avoiding detection in order to succeed in killing innocent civilians. Can anyone seriously suggest that there is not an equally compelling need to uncover the plans of these murderers, regardless of the intended destination of the call? I don't think so, and believe that it would be a serious error to move away from a rationale that remains as valid today, if not more so than it did in 1978.

PAKISTAN AS AN EXAMPLE FOR THE NEED FOR INTEL

In this regard, is there anyone who has been following events in Pakistan who does not have an appreciation for the need for the greatest flexibility in our foreign intelligence collection. Although I am sure that we all hope for an outcome in Pakistan which entails stability and democratic elections, our national security policy cannot be based upon hope. This is a nation with nuclear weapons and a segment of the population which subscribes to radical Islamic ideologies. We need the best foreign intelligence possible to ensure that if the unthinkable was ever to happen that we are in the best possible position to detect any potential transfer of nuclear materials or a WMD that could end up in the hands of terrorists positioned in the United States. Good foreign intelligence is essential to the protection of the American people.

#### OPTIONS FOR STIMULATING THE U.S. ECONOMY THROUGH EFFICIENCY AND CLEAN ENERGY

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

Mr. INSLEE. Mr. Speaker, I come to the House floor today to address the two issues that we have a chance to really move forward on, and that is the difficulties in our economy and the difficulties in our energy policy; and we think we have an opportunity, and I met this afternoon with a good number of my colleagues about how to do something about both, the slow-down in our economy and our need to rejuvenate our economy by adopting some new clean energy strategies for the country. We think this is an ideal opportunity for the House of Representatives to lead a short-term plan economically to help stimulate our economy, while at the same time directing our economy towards a clean energy future which can really grow jobs, millions of jobs in our country.

What the group of my colleagues and I discussed is the hope that in our up-

coming stimulus package, which is now under development, that our stimulus package can hew to the values set forth by Speaker PELOSI of being timely, targeted, and temporary. We think if we follow those three guidelines, we can do things to help our short-term clean energy revolution really take off in the United States.

I have come to the floor to talk about that night, about some options that are available to us. We know that we want to make sure that our stimulus package is timely, that it in fact gets into the economy very quickly, because that is what we need. This is not something that can wait 5 years. We need to have a stimulus now. But we also need that stimulus to be targeted. This is not a moment where it would be wise for us to simply sort of spread butter across America very thinly in the hopes that somehow it will help the economy blossom.

We need to target our strategies so that it will be really driving economic growth in the United States and, importantly, make sure that that economic growth takes place in the United States. It won't do us much good to just short of spread a thin layer of relief, because a lot of that would end up buying products from China, frankly.

We want to look for targeted stimulus that will really help the growth in the American economy and create jobs in America. If we have a choice between two activities, one of which would be simply to allow buying retail products from China, and one which would really grow jobs in America, we should pick the latter.

A group of my colleagues and myself want to make a proposal that will ensure that we target some of the stimulus into a clean energy future for America that really grows jobs in this country and doesn't simply buy retail products from China. So we are going to make a proposal that will suggest that we adopt some measures that in a very timely fashion can inject growth into the American economy this year and will ensure that we target that strategy to the development of clean energy jobs, and I want to talk about some of the things that can accomplish that in our stimulus package.

The first thing that we will propose is a very down-to-Earth, extremely commonsense expansion of an existing program that helps low-income Americans weatherize their homes. We currently have a program that is working very well, very efficient, and extremely popular to help Americans put in insulation, fill in cracks, get energy-efficient windows, essentially just quit wasting heat that filters out through the cracks of our homes. That right now is a \$250 million program to help Americans do that.

We suggest we boost that by \$100 million this year in a program that can immediately put people to work. We know we have people that are losing their jobs today because the home construction industry is slowing down,