district this last Thursday. On what seemed to be a typical night in what has long been considered an almost idyllic community, Charles Lee Thornton shot and killed Police Sergeant William Biggs outside of the Kirkwood City Hall.

After entering City Hall, Mr. Thornton then shot and killed four dedicated civil servants and severely wounded the mayor before he himself was shot and killed by responding Kirkwood police officers.

Today, Kirkwood Mayor Mike Swoboda continues to struggle for his life.

Those killed in the City Hall were Police Officer Tom Ballman, Councilwoman Connie Karr, Councilman Mike Lynch, and Public Works Director Kenneth Yost. Kenneth Yost had served in that position for 35 years.

As Kirkwood and surrounding communities lay to rest officers and public servants, one cannot help but be moved by the deep sense of faith expressed by the family and friends they have left behind. What has also become so clear is the deep commitment that these individuals had for their community.

With that service in mind, I would like to refer to Matthew 20:28, which states: ''Among you, whoever wants to be great must be your servant, and whoever wants to be first must be the willing servant of all, like the Son of Man; He did not come to be served but to serve and to give up his life as a ransom for many.''

OH WHERE, OH WHERE CAN THE PHANTOM AIR BASE BE?

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

Mr. POE. Oh where, oh where has the American air base gone? Oh where or where can it be? With its 6,000 phantom troops and 32 million missing dollars, oh where, oh where can it be?

Madam Speaker, let me explain. Corruption has struck again, and just like times in the past, it's at the taxpayers' expense.

Government investigators recently uncovered the newest scam in contracting. This time it's a phantom air base in Iraq, purchased by the U.S. taxpayers at the tune of $32 million.

Madam Speaker, here it is, or here it's supposed to be. This is a photograph of the location in Iraq where the air base is, or where it was supposed to be built. But you can see that there is nothing to see because it was never built.

Last month the Inspector General at the Defense Department released a report about money spent to help train and equip Iraqi military and police forces. The contracting project in question was awarded to Ellis Environmental Group, a U.S. company based out of Florida, in 2006. The U.S. Air Force paid the company $32 million for this project, this air base in Iraq. The construction contract would have involved the creation of barracks and offices for 6,000 Iraqi troops in Ramadi, the capital of the Anbar province.

But the project had to be abandoned before anything was ever built when the Iraqi Defense Ministry failed to obtain this desert land for the base.

So what happened to the $32 million the Air Force doled out to Ellis Environmental? The alarming answer is no one knows. And the company won't say.

An Air Force spokesman says the contractor set up a camp for construction workers and began design work for the headquarters before the project was halted. But nothing was ever built. All we know now is that none of the $32 million the U.S. paid out to these contractors was returned to U.S. taxpayers. The Air Force is set to begin an audit of the project, but no one knows how long that's going to take.

The Inspector General report documents more abuses. And USA Today Matt Keller, reporter, said the findings show ''the military didn't keep adequate records of equipment for the Iraqis ranging from generators and garage trucks to thousands of guns and grenade launchers. Separately, the United States has launched a criminal investigation into allegations that weapons it bought for the Iraqi soldiers ended up in the hands of insurgent and terrorist groups.''

Madam Speaker, this ought not to be.

In the meantime, Ellis Environmental Group has changed its name.

If a crime has been committed, these outlaws responsible need to be held accountable. Madam Speaker, war profiteers that make money off of war by building ''phantom'' military bases like this one should be prosecuted. This type of conduct fits the definition of war crimes. Maybe we should build a real prison for war criminals out in this desert in the sands of Iraq to house thieves that steal American money.

So, Madam Speaker, oh where, oh where has the American base gone? Oh where, oh where can it be? With its 6,000 phantom troops and 32 million missing dollars, it's where, oh where no one can see.

And that's just the way it is.

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

(Mr. YARMUTH 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 North Carolina (Mr. JONES) is recognized for 5 minutes.

(Mr. JONES of North Carolina 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. 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 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 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 California (Mr. DANIEL E. LUNGREN) is recognized for 60 minutes as the designee of the minority leader.

Mr. DANIEL E. LUNGREN of California. Well, here we go again, Mr. Speaker. As Yogi Berra once put it, ''This is like deja vu all over again.''

When the Director of National Intelligence, Admiral McConnell, came to the Congress for help, he was only given a 180-day authority to conduct surveillance which he described at the time as necessary to close our ''critical intelligence gaps.'' Of course, that authority expired on February 1, and the 2-week extension of the Protect America Act expires this Friday. Now, while the Democratic majority's so-called RESTORE Act passed by this body recognized the need to defend our Nation beyond 180 days, it would also have repealed core provisions requested by Admiral McConnell, and it also contained a sunset date approximately 2 years from now. While the other body has just passed this evening a 6-year extension of the new FISA bill, it remains to be seen how this will be reconciled with the RESTORE Act passed by this body.

It is certainly my hope that this body will affirm the bipartisan agreement reached by the Senate this evening. It is in concert with the outline of a bill supported by 21 Members of the majority side in a letter they sent to the Speaker just several weeks ago. In my estimation, there is no issue of greater importance to our Nation at

the present time. The surveillance of foreign terrorists is critical to our ability to protect our homeland and to assure the safety of the American people. The other body has risen to this challenge by passing legislation that may not be perfect but which does respond to the basic concerns laid out by Admiral McConnell.

Yet, according to press accounts I've seen, some have suggested that the expiration of the Protect America Act wouldn't be that consequential because they say it would not interfere with surveillance which has already begun. Well, let me suggest that even if that were the case, it completely ignores the impact on new terrorist communications which may arise. For instance, if we get word on Saturday, February 16, that an al Qaeda member in Kandahar is on the line with someone in Munich on a call that travels through a New York switch, this is a conversation which should be of interest to us. The point is, if the Protect America Act is allowed to expire, the bill in the Senate is not passed, this terrorist communication may not be intercepted.

I would add that we have had plenty of time to view this issue. We have had plenty of discussion on the relevant committees, and now the bipartisan bill that passed the other body is available for us to act upon.

What must the rest of the world, much less the terrorists who seek to kill us, think of the national security policy that we have displayed of fits and starts? This hardly resembles the actions of a super power determined to protect its citizens from such an ominous outcome. The only hope that we can have is that such indecision perhaps will be construed as a plan to confuse the terrorists, double jujitsu, if you will.

On the other hand, those of us who view the rest of the world through the jihadist prism may be picking up a very different message concerning the level of our determination.

This on again, off again policy of terrorist surveillance has to end. We must give Admiral McConnell and those in the intelligence community under his charge the tools necessary to protect the American people, and we must do so on a permanent basis.

Does anyone realistically believe the imposition of arbitrary sunsets every few weeks or every few months somehow places us in the position to return to a pre-9/11 world? Such wish fulfillment is no basis for the formulation of national security policy, for we no longer live in a world where wishful thinking is permissible if we are to fulfill our obligation to those who have sent us here to represent them and protect them. This is the first obligation of government. And after 9/11 or 7–7 in London, Bali, Madrid, Amman Jordan, and Glasgow, we no longer have the option to pretend otherwise.

□ 2100

Our policy as a nation must begin with the recognition of this reality. However inconvenient or discomforting it might be for some of us, we must recognize that meeting the challenge posed by those who seek to kill us is going to be a long-term, not short-term, challenge. It therefore requires a long-term investment in our security.

We cannot just be thinking about 2 weeks, or 21 days, or 6 months, or 2 years out. The gravity of the challenge we face requires a commitment which is commensurate with the serious nature of the threat. The American people demand that this be our serious approach.

Although it is my belief that a permanent reauthorization is therefore consistent with the history of the FISA Act, consistent with the threat that we face, and consistent with what the American people wish, the 6-year extension contained in the bipartisan language which passed the other body this evening is a meaningful compromise. We must send a clear message to terrorists that we understand the nature of our struggle. There must be no doubt in their minds that we will never forget what they have done and that we are committed to the long haul.

I take a back seat to no one on the question of the need for vigorous congressional oversight of the executive branch. I spoke about this before I returned to this Congress after a 16-year absence. However, when we are told by Admiral McConnell what he needs and then this body does not listen and attempts to reinvent the wheel with the so-called RESTORE Act, there surely should be some compelling justification for such a rejection of the Director of National Intelligence request.

Let me suggest that it has been more than 6 months since the enactment of the Protect America Act. So what is the factual basis to justify the dramatic changes that were embodied in the majority party's so-called RESTORE Act? After all this time, what is the evidence that Admiral McConnell was wrong? We now have the benefit of 20/20 hindsight. It is no longer necessary for us to speculate.

So how are the changes to the Protect America Act embodied in the RESTORE Act borne out by experience? We now have the basis for making empirical judgments; and unless there are answers to these basic questions, attempts to rewrite Admiral McConnell's bottom line are nothing more than a leap into the dark, a serious existential leap concerning the safety and security of all Americans.

Or is there something else other than evidence at work here? During our legislative hearings in the Judiciary Committee, there were concerns expressed that in reaching the compromise agreement which became the Protect America Act that somehow the White House may have unduly influenced the process. There were questions raised about whether Admiral McConnell could speak truth to power.

Let me first of all say that the interest of the White House in protecting the national security of our Nation is about as much of a surprise as the discovery that gambling was going on in Joe's Bar in the movie ''Casablanca.'' It would be more of a shock to learn the administration, or any administration for that matter, lacked an interest in a matter of such magnitude relating to its essential obligation to protect the American people.

After 9/11, it should never again happen that everything that could be done wasn't done to ensure that we connect the dots. No, the real issue here was one of credibility, or so some attempted to make it, the credibility of Admiral McConnell concerning, as was stated by one of my colleagues on our committee, to speak truth to power.

One interesting incident subsequent to the adoption of the so-called RESTORE Act provides us with persuasive evidence of Admiral McConnell's independent judgment. Regardless of how one interprets the 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. There should be no doubt in anyone's mind that Admiral McConnell is a man of honor who calls it as he sees it. This is important because he told us how he sees it; and unlike the bipartisan coalition in the other body, our adoption of the majority party's RESTORE Act proved, I fear, that we did not listen to him with seriousness of purpose.

It was not enough that this man had served in Democrat and Republican administrations and had a distinguished naval career. After all, some would say we are talking about the Bush administration. So let me suggest, this is not about President Bush. As bumper stickers I have seen on the road reflect, by 1/20/09 President Bush will no longer be in office. We will have a new administration and a new President, whomever he or she will be.

But whomever they will be, they will continue to face the same threat by radical jihadists whose primary aim in life is to kill us. That will not change. Regardless of which political party occupies the White House, the one advantage we will need to defend against another horrific attack will be the need to learn of their plans before they are carried out, to gather intelligence; and if we are to be successful in doing so, the surveillance of foreign terrorists will be critical to this endeavor.

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

The development of 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 in the so-called RESTORE Act, which passed this body, this body, in November. Unless the bipartisan agreement which passed the other body this evening is adopted, we will be without the minimum acceptable threshold of protection negotiated with Admiral McConnell last August.

Although this body did adopt the so-called RESTORE Act in November of last year, that legislation would impose additional burdens on the intelligence community which undermined the essential nature of the compromise reached with Admiral McConnell. Furthermore, the RESTORE Act punted on the critical question of whether retroactive protection could be extended to those communication providers who responded to the call for help from their government in the wake of 9/11.

What does that mean? It means simply this: while we recognize in other situations that a Good Samaritan law makes sense; that is, we want to encourage doctors or health care providers who come upon an accident on the highway to utilize their expertise to help those who might be injured at that location without regard to the possibility of lawsuits thereafter, even though we know that that might, in some cases, make it impossible to sue a doctor for what otherwise would be considered malpractice. We make that judgment because we believe on balance it is for the good of society and in most cases will allow extra protections or extra treatment that otherwise might not be there for someone who has been the victim of such an accident.

Similarly, the Senate bill recognizes how important it is that we have the intelligence necessary to identify the threat that is posed by those who would wish to kill us and destroy us in the name of some distorted version of religious purpose.

And so what we have said, at least what the other body has said, what the President has asked for, what Admiral McConnell has asked for is a type of national Good Samaritan law with respect to the collection of foreign intelligence. In other words, when in an emergency situation, in a terrorist scenario, in the aftermath of 9/11, when the government desperately needs to be able to gather as much information as possible with respect to foreign intelligence, foreign actors who wish to do harm to us, the government reached out to various companies who are able to aid them in that way, and all the bill that has passed the Senate does, and the bill which hopefully will be before us sometime this week, all it does is say that if you responded in good faith to the request of the Federal Government to assist in the collection of information about foreign intelligence relative to the threat that is posed by this terrorist effort around the world, we will hold you harmless. We will have you immune from lawsuits.

Now, when this question was presented to us in the Judiciary Committee, one of my friends on the other side of the aisle, in opposing that, said these people have many high-priced attorneys and they can respond to that themselves. Now, what if we took that as our approach to a Good Samaritan law with respect to accidents on the highway? We would say, well, we don't have to worry because these doctors have a lot of money. They can hire a lot of high-priced attorneys. They can defend themselves in court thereafter. Do we think that would encourage doctors and other medical specialists or health specialists to assist? I think not. At least that has been the decision we have made in State after State after State where we have said on balance, for the good of society, we will create these laws.

No, what we passed on the floor of the House, the so-called RESTORE Act, was the anti-Good Samaritan law. It was Good Samaritan beware: if you dare respond affirmatively to a request by your government and act in good faith to help that government obtain the information against foreign actors with respect to their evil intent to try and destroy us, you may be subjected to lawsuit after lawsuit.

Now is this just a figment of my imagination, the imagination of others, the imagination of those in the Senate who brought forth this bill? No, because we know there are numerous lawsuits that have been filed against those companies that they believe responded affirmatively to the request by the Federal Government to assist them in gathering that information in the wake of 9/11.

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. Well, my friends on the other side of the aisle are fond of the rejoinder that they only require a basket warrant under their approach. 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. And as Admiral McConnell has explained time and time and time again, in the real world of intelligence, this is simply unworkable.

Furthermore, in the alternative presented by the majority in their RESTORE Act, which presumably they want to go to conference on and against which they would place the Senate bill, the language found in section 2(a)(2) of that House bill creates even more problems. The language of the majority party's RESTORE Act includes a section entitled: ''Treatment of inadvertent interceptions.'' It deals with this situation: the intelligence community believes in good faith that they are dealing with a foreign-to-foreign communications, but inadvertently they capture communication that deals with a foreign-to-domestic call. And you say how could that happen? Well, in the real world, you can only target one end of the conversation. So when we go into this and we target one end of the conversation and in good faith believe that that is going to be foreign-to-foreign, occasionally you might get foreign-to-domestic. So what happens? The language in the majority party's bill says you cannot use that information for any purpose. You can't disclose it. You can't disseminate it. It 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, the information contained, indicates a threat of death or serious bodily harm to any person.

Now, you might say, well, that should take care of all situations, shouldn't it? Well, let's say we have a conversation or communication involving Osama bin Laden and the communication involves someone within the United States, and there is no indication, no indication whatsoever in that communication concerning a threat of death or serious bodily harm to any person. But the conversation, the contents of the conversation, indicate the exact cave where Osama bin Laden may be. We would find ourselves unable to act.

□ 2115

I know that sounds absurd, but in fact that is a fair reading. In fact, it is the only reading of that section of the bill that the other side of the aisle wishes to have passed in lieu of the bill that was presented by the Senate today. It is simply unacceptable.

Now, to be fair, the majority says, well, wait a second. Your concern is not well placed because there is language found in section 22 of the majority bill which provides that it would not ''prohibit the intelligence community from conducting lawful surveillance necessary to prevent Osama bin Laden or any other terrorist or terrorist organization from attacking the United States.'' So they say, you see, we have taken care of that problem. But they haven't.

The problem with this logic is that the qualification found in that language that the surveillance must be ''lawful'' is obviously affected by what is found elsewhere in the bill, including the language contained in section 2(a)2 that I just discussed. Thus by its own terms, any assertion that we will be able to listen to the conversations of Osama bin Laden must be read in light of the remainder of the bill.

Again, why are we going down this road? Why is the majority so insistent on not allowing us an up or down vote on the Senate bill? Why are they so insistent on the product that we produced on this floor that has these problems that I have just mentioned?

Since the enactment of the Protect America Act, the one that we passed on August 5, the one upon which the bill in the Senate is based, what facts and what evidence have arisen which would warrant second guessing the intelligence community and its assessment of the minimum requirements necessary in order to continue the protection of the American people? And, Mr. Speaker, I would say if this is not about facts, if this is not about evidence, then what is it about?

It should be noted that the bipartisan legislation passed by the other body does not contain this entirely unacceptable language I mentioned from section 2(a)2 of the House bill.

Now, surely one thing not at issue is the effect of the Protect America Act and its progeny, the bill produced in the Senate today. Its effect on the civil liberties of Americans is not at issue. Let me point this out. There is nothing contained in the Protect America Act or in the bill passed by the Senate today 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 the law, which has existed since 1978, nor does the Senate bill.

So, there are two things which must be kept in mind. First, if the intelligence community targets someone inside the United States, the community must first obtain a court order from the FISA court. That does not change.

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 or another terrorist calls a U.S. person within the United States, the end of the conversation conducted by the U.S. person, the person he called to in the United States, that end of the conversation would have to be what we call in the law minimized under the existing procedures of the 1978 act.

Let me again emphasize that 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 with which we have been familiar on the criminal side for decades as well.

In other words, when a court allows for a wiretap in a criminal case in the United States, a domestic criminal case, again, the wiretap is only on one end. So they put a wiretap on a Mafia boss. That wiretap captures conversations from that particular phone to many, many different others, and if in fact it goes to somebody who is not involved whatever in the criminal enterprise, that conversation, that part of the conversation dealing with that person is minimized. If, because of something that attracts the investigator's attention on that end of the line going towards criminal investigation must go forward, then they have to go to court to get a court order with respect to that individual. That is the same way we handle minimization in these FISA cases.

In an interesting exchange during our Judiciary Committee hearing on FISA, Admiral McConnell was queried as to how many Americans have been wiretapped without a court order? The direct response by Admiral McConnell was ''none.'' He went on to say this: ''There are no wiretaps against Americans without a court order. None. What we are doing is we target a foreign person in a foreign country. If that person calls into the United States, we have to do something with that call, that process is called minimization. It was the law in 1978. It is the way it is handled.''

Any suggestion that the intelligence community could somehow operate outside the law because of anything we did in adopting the Protect America Act this past August or in adopting the bill sent over from the Senate is a regrettable reversion to scaremonger.

I would suggest that the attempt to scare the American people into believing we have jeopardized their civil liberties by exposing them to warrantless surveillance does a disservice to rational political discourse. And I would also suggest that except for those on the ideological fringes who might fear their government more than they fear al Qaeda, it will also prove to be a failed political strategy.

You don't have to like President Bush, you don't have to countenance the war in Iraq, to understand who the real enemy is, those who killed over 3,000 of our fellow citizens on September 11. Nothing in the Protect America Act, nothing in the bipartisan compromise which just passed the other body, would adversely affect constitutionally protected privacy interests.

In the seminal Fourth Amendment privacy case entitled Katz v. United States, the Supreme Court held that the protection of the Fourth Amendment extended to cases involving electronic surveillance of oral communications without the requirement of a physical intrusion.

Before that, there was a question as to previous decisions by the court and whether or not these protections would go if there was no physical intrusion. In Katz v. United States, the court held that the Fourth Amendment did extend to cases involving electronic surveillance of oral communications, even though there was no physical intrusion. At the same time, however, the Supreme Court expressly stated that national security cases were expressly outside the purview of its holding in that case.

Furthermore, in his concurring opinion, Justice ''Whizzer'' White, I think his picture can be found in Webster's Dictionary besides the word ''moderate,'' made the following observation: Speaking of the court he said, ''We should not require the warrant procedure and the magistrate's judgement if the President of the United States or his legal officer the Attorney General has considered the requirements of national security and authorized electronic surveillance as reasonable.''

In the debate before us where the issue involves the surveillance of foreigners outside the United States, the civil liberties concerned are minimal, if not nonexistent. What do I mean by that? In a case where terrorists might call a U.S. person, the FISA minimization procedures which have applied since 1978 continue to protect the privacy interests of Americans and legal residents in the United States.

Thus, in arriving at a definition of reasonableness on the Fourth Amendment, it comes down to how serious one deems the threat of another 9/11 to be. In fact, if you consider the threat of another attack on the American people to be serious, it would be a terrible mistake to walk away from what Admiral McConnell has told us he needs, for there is perhaps know greater threat to civil liberties than the prospect of another successful attack on the United States. It was for this very reason that the 9/11 Commission itself made the observation that ''the choice between security and liberty is a false choice, as nothing is more likely to endanger America's liberties than the success of a terrorist attack at home.''

Simply put, if we suffer a terrorist attack at home, another terrorist attack at home, the response of the American people might very well be to cut back on our protection of civil liberties in order to protect us from such terrorist attack.

The 9/11 Commission has suggested that if we do those things that are necessary in our and are constitutional, we ought not to face that false choice of security versus liberty. It is in this context that we must view the legislation currently before this body. It is not a zero sum game, where increasing our Nation's security necessarily comes at the expense of liberty. This is a false dichotomy.

This is not an abstract philosophical debate. No. It involves the targeting of foreign individuals outside the United States. It was for this reason that the United States Supreme Court in the Keith case, much like the 9/11 Commission, noted that were the government to fail ''to preserve the security of its people, society itself would become so disordered that all rights and liberties would become endangered.''

Mr. Speaker, yesterday I had the opportunity to observe the FISA debate taking place in the other body. The senior Senator from my State of California, for whom I have great respect, was arguing for more restrictive language, positing FISA as the exclusive means for the conduct of electronic surveillance.

Let me say that this concept is already embodied in the current FISA statute and there is nothing whatsoever in the Protect America Act or the

bill that has come to us from the Senate which in any way alters or affects that. It is irrelevant to the reason for which Admiral McConnell came to the Congress and asked us to close critical gaps in our foreign intelligence.

First of all, it is not clear there was an attempt by Congress to occupy the field when the issue is foreign intelligence or foreign surveillance of non-U.S. persons in contrast to the definition of electronic surveillance within FISA itself. It was recognized at the time that there were constitutional limits on how far the Congress could go. There was testimony to that effect by former Attorney General Griffin Bell, with whom we are all familiar.

Secondly, the House conference report on the 1978 FISA statute contains an interesting admission concerning the scope of the coverage by the statute. The House conference report recognized that the statute's restrictions might impermissibly impinge or infringe on the President's constitutional powers. The report acknowledges that ''the conferees agree that the establishment of this act of exclusive means by which the President may conduct electronic surveillance does not foreclose a different decision by the Supreme Court.''

The conference report explained that Congress intended in FISA to exert whatever power Congress constitutionally had over the subject matter to restrict foreign intelligence surveillance, and to leave the President solely with whatever inherent constitutional authority he might be able to invoke against Congress' express wishes.

The legislative history in the Senate also reveals that the provisions in FISA were intended to exclude certain intelligence activities conducted by the NSA from the coverage of FISA.

With respect to 50 USC 2511(2)(f), it is clear that the legislation does not deal with international signals intelligence activities as currently engaged in by NSA in electronic surveillance conducted outside the United States. The legislative history also makes clear the definition of electronic surveillance was crafted for this very same reason.

It is particularly noteworthy that the FISA Court of Appeals itself states in ''In re: Sealed Case'' that ''all the other courts to have decided the issue held that the President did have inherent authority to conduct warrantless searches to obtain foreign intelligence information.'' The court further stated, ''We take for granted that the President does that have that authority.''

The United States Supreme Court itself in the Keith case held that the warrant requirement would apply to national security investigations involving purely domestic targets with no suspected ties to a foreign power. However, Justice Powell carefully distinguished this holding from foreign intelligence cases in writing that ''the instant case requires no judgment on the scope of the President's surveillance power with respect to the activities of foreign powers.'' It is thus clear that the United States Supreme Court itself has drawn a commonsense distinction between domestic surveillance and foreign surveillance.

The Protect America Act and its progeny, the bipartisan Senate bill passed today, they respect these parameters in that their focus is on non-U.S. persons located overseas where an American that is not the target of the surveillance. If a U.S. person happens to be on the other ends of a conversation with Osama bin Laden, the remedy, as I said before, is minimization, purging the non-targeted American's contribution to the conversation.

□ 2130

Thus, there is no need to bar the use or dissemination of such information as required under the terms of the majority's so-called RESTORE Act. Privacy and civil liberty considerations are simply not implicated to any significant degree in the foreign surveillance context.

In order to reach a compromise with the House leadership last August, Admiral McConnell was forced to punt on the issue of those telecommunications providers who came to the aid of their country in the wake of 9/11. The RESTORE Act subsequently passed by this body fails to deal with this issue at all. The message delivered to these companies is simply that you are on your own.

The idea that these companies should be met with the response that you are on your own is simply incomprehensible. They did what they did not because they thought about it on their own, but because they were responding to requests from their government in the wake of the worst attack on this Nation since Pearl Harbor. If there was a mistake in policy, which I do not believe to have been the case, but if there were such a mistake, the mistake was made by the government, not by those who were asked to help prevent another 9/11.

Let us not forget that although we have not been the victim of another successful attack, from the vantage point of the post-September 11 time frame, there was great anticipation about the prospect of another attack. Those who like to inveigh against the failure to connect the dots cannot in the same breath turn their backs on those who sought to make sure that such a thing did not happen again.

Further, I would say, what kind of signal does this send to those who, during some future conflict, are approached by our government to help prevent another cataclysmic assault on our Nation? Our friends on the other side of the aisle should think long and hard before they feed these telecommunications entities to the litigation sharks. It may be a different war, it may be a different President, but this is the worst possible precedent. If you are going to tell these companies that you are on your own, the next time they may tell us, well then, connect your own dots.

This body failed to address this critical issue, which will surely affect the willingness of Americans to come to the aid of our government when this Nation faces future peril.

However, all Americans can find solace from the fact that the bipartisan legislation which passed the other body this evening does meet this challenge. It does say that we would grant immunity to those companies that responded, in good faith, to the request by their government to assist them in gathering this information and would limit it from the date of 9/11 up to the present time. Very specific, very specific with respect to that. And, interestingly enough, there doesn't seem to be dispute or hasn't been dispute about making that kind of prospective. But should we say that those who have helped us in the past in the aftermath of the worst attack since Pearl Harbor are to be viewed as lacking? That somehow they are to take the fall? If there were mistakes, they were government mistakes, and you ought not to attack third parties who responded in a responsible good-faith way.

Both justice and common sense dictate that future Presidents of both parties may need help, may need to call on the help of the American people should we face another terrible event of the magnitude of 9/11.

So, Mr. Speaker, let's be clear: this is not a partisan issue. All Americans of both parties have the same desire to raise their families in a Nation of secure communities free from the fear of another cataclysmic attack. The other body has considered this at some length and acted reasonably. We are up against a deadline at the end of this week. The Senate bill, unlike its House counterpart, does respond to the national security needs of our Nation. It is evidence of the fact that the majority and minority can work together to protect the public.

On August 5, this body demonstrated, with the passage of the Protect America Act, that it likewise can put aside partisan differences and meet this most solemn obligation that we have to those who have elected us. Once again, we are called upon to do so.

So I would hope, Mr. Speaker, that tomorrow we not go forward with an effort to have a 21-day extension of the current law and kick the can down the road again; that we actually come forth and debate vigorously and vote on the bipartisan compromise presented to us by the Senate today; that we face squarely the question of whether we are going to enact a Good Samaritan law for those companies and individuals who responded to the call of their country, or whether we are going to take a position that only an anti-Good Samaritan law makes sense in the context of this fight against extreme Islamo-fascism.

Mr. Speaker, although even-numbered years have the tendency to raise

the volume of rhetoric, the protection of the American people should transcend politics as a fundamental obligation of government. The other body has put the public interest above partisanship, and I would hope that we can follow their example.

Mr. Speaker, I would ask that we have consideration of the Senate bill brought forth on this floor within the next 2 legislative days so that the people of the United States can watch their Representatives in this House work their will on that proposal.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. CUELLAR (at the request of Mr. HOYER) for today on account of inclement weather.

Mr. CUMMINGS (at the request of Mr. HOYER) for today on account of business in the district.

Mr. HONDA (at the request of Mr. HOYER) for today and the balance of the week on account of family medical reasons.

Mr. ORTIZ (at the request of Mr. HOYER) for today on account of business in the district.

Mr. RODRIGUEZ (at the request of Mr. HOYER) for today on account of weather delay.

Mr. RUPPERSBERGER (at the request of Mr. HOYER) for today and the balance of the week on account of medical reasons.

Mr. RYAN of Ohio (at the request of Mr. HOYER) for today on account of inclement weather in the district.

Mr. KUHL of New York (at the request of Mr. BOEHNER) for today on account of bad weather.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. CARNAHAN) to revise and extend their remarks and include extraneous material:)

Ms. WOOLSEY, for 5 minutes, today.

Mr. CARNAHAN, for 5 minutes, today.

Mr. YARMUTH, for 5 minutes, today.

Mr. DEFAZIO, for 5 minutes, today.

Ms. KAPTUR, for 5 minutes, today.

(The following Members (at the request of Mr. POE) to revise and extend their remarks and include extraneous material:)

Mr. FRANKS of Arizona, for 5 minutes, February 13, 14, and 15.

Mr. POE, for 5 minutes, February 15.

Mr. JONES of North Carolina, for 5 minutes, February 15.

Mr. BURGESS, for 5 minutes, today and February 13.

Mr. SALI, for 5 minutes, February 14.

Mr. BURTON of Indiana, for 5 minutes, today and February 13, 14, and 15.

Mr. KINGSTON, for 5 minutes, February 13.

Mr. KIRK, for 5 minutes, February 13.

Mr. DAVIS of Kentucky, for 5 minutes, February 14.

Mr. DENT, for 5 minutes, February 13.

SENATE BILL AND CONCURRENT RESOLUTIONS REFERRED

A bill and concurrent resolutions of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 2071. An act to enhance the ability to combat methamphetamine; to the Committee on Energy and Commerce; in addition to the Committee on the Judiciary for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

S. Con. Res. 67. Concurrent resolution establishing the Joint Congressional Committee on Inaugural Ceremonies; to the Committee on House Administration.

S. Con. Res. 68. Concurrent resolution authorizing the use of the rotunda of the Capitol by the Joint Congressional Committee on Inaugural Ceremonies; to the Committee on House Administration.

SENATE ENROLLED BILL SIGNED

The Speaker announced her signature to an enrolled bill of the Senate of the following title:

S. 781. An act to extend the authority of the Federal Trade Commission to collect Do-Not-Call Registry fees to fiscal years after fiscal year 2007.

BILLS PRESENTED TO THE PRESIDENT

Lorraine C. Miller, Clerk of the House, reports that on February 7, 2008, she presented to the President of the United States, for his approval, the following bill.

H.R. 4253. To improve and expand small business assistance programs for veterans of the armed forces and military reservists, and for other purposes.

Lorraine C. Miller, Clerk of the House, further reports that on February 8, 2008, she presented to the President of the United States, for his approval, the following bill.

H.R. 5140. To provide economic stimulus through recovery rebates to individuals, incentives for business investment, and an increase in conforming and FHA loan limits.

ADJOURNMENT

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 9 o'clock and 36 minutes p.m.), pursuant to House Resolution 975, the House adjourned until tomorrow, Wednesday, February 13, 2008, at 10 a.m., as a further mark of respect to the memory of the late Honorable TOM LANTOS.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

5286. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Zeta-cypermethrin; Pesticide Tolerance [EPA-HQ-2007-0300; FRL-8346-3] received December 26, 2007, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

5287. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Trifloxystrobin; Pesticide Tolerance [EPA-HQ-OPP-2006-0732; FRL-8342-6] received December 26, 2007, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

5288. A letter from the Under Secretary for Acquisition, Technology and Logistics, Department of Defense, transmitting notification that increases in both the Program Acquisition Unit Cost (PAUC) and the Procurement Unit Cost (PUC) for the Joint Tactical Radio System Ground Mobile Radio (JTRS GMR) program exceed 15 percent, pursuant to 10 U.S.C. 2433; to the Committee on Armed Services.

5289. A letter from the Chairman, Commission on the National Guard and Reserves, transmitting the Commission's final report on the assessment of the reserve components of the U.S. military and recommendations to ensure that they are organized, trained, equipped, compensated, and supported to best meet the current and future requirements of U.S. national security; to the Committee on Armed Services.

5290. A letter from the Assistant Secretary for Homeland Defense and Americas' Security Affairs, Department of Defense, transmitting a report on assistance provided by the Department of Defense to civilian sporting events in support of essential security and safety, covering the period of calendar year 2007, pursuant to 10 U.S.C. 2564(e); to the Committee on Armed Services.

5291. A letter from the Under Secretary for Acquisition, Technology and Logistics, Department of Defense, transmitting the Department's report on progress toward compliance with destruction of the U.S. stockpile of lethal chemical agents and munitions by the extended Chemical Weapons Convention deadline of April 29, 2012, and not later than December 31, 2017, pursuant to Public Law 110-116, section 8119; to the Committee on Armed Services.

5292. A letter from the Secretary, Department of Defense, transmitting a letter on the approved retirement of Lieutenant General Bruce A. Wright, United States Air Force, and his advancement to the grade of lieutenant general on the retired list; to the Committee on Armed Services.

5293. A letter from the Deputy Administrator for Defense Programs, Department of Energy, transmitting the Department's draft Complex Transformation Supplemental Programmatic Environmental Impact Statement; to the Committee on Armed Services.

5294. A letter from the President and Chief Executive Officer, Corporation for Public Broadcasting, transmitting the Annual Report of the Corporation for Public Broadcasting for Fiscal Year 2006, pursuant to 47 U.S.C. 396(k)(3)(B)(iii)(V); to the Committee on Energy and Commerce.

5295. A letter from the Secretary, Department of Energy, transmitting the Department's report entitled, ''Facing the Hard Truths about Energy: A Comprehensive View to 2030 of Global Oil and Natural Gas''; to the Committee on Energy and Commerce.

5296. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities;