

The members of the FISA Court are sitting district court judges and have their own full dockets.

The risk of unnecessarily exposing some of our most sensitive collection if litigation continues is too great. The best remedy is to provide immunity to the telecommunication providers as the managers' amendment does. Other amendments propose unnecessary additions to provisions already included in the managers' amendment. For example, the managers' amendment contains a 6-year sunset and an exclusivity provision. Yet amendments have been offered to make this legislation expire in 2 years or 4 years.

Additionally, an amendment has been offered to state that absent some other expressed order from Congress, FISA and title XVIII are the exclusive means to conduct electronic surveillance. This would require Congress to pass a law authorizing the President to conduct electronic surveillance after an attack on our country.

What if Congress were not able to meet, let alone agree on language authorizing electronic surveillance after an attack on our country? This amendment ignores longstanding debate regarding article I and article II powers, a debate the courts have dodged time and again. I support the bipartisan language in the managers' amendment which maintains the status quo of this important constitutional question.

Finally, an amendment has been offered requiring an audit of the terrorist surveillance program. As I stated earlier in comments yesterday, the Intelligence Committee has conducted a thorough review of this program over many months, which included testimony, extensive document reviews, and even trips out to our intelligence agencies to witness how this program is operated.

I understand that sometimes partisanship impedes action in Congress. But I do not recall when some of my colleagues have had such little faith in the bipartisan findings and conclusions of a committee in this body.

This amendment disregards the committee's finding and asks for yet another retrospective review of this program. This is not only duplicative, but it is unnecessary. The Protect America Act expires a week from today; the threat from al-Qaida will not expire a week from today.

It is now time for Congress to act and to fix FISA so our intelligence community has the tools it needs to do its job in a very professional manner and gather information necessary to protect our national security.

Protecting our national security is in the interest of all Americans, and Congress should seek to ensure that our Nation is protected fully. The members of the intelligence community say the managers' amendment contains many tools they need to protect our country. I urge my colleagues to support the managers' amendment.

I yield the floor and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DODD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### ECONOMIC STIMULUS

Mr. DODD. Mr. President, I had earlier this morning intended to spend a few minutes talking about the stimulus package that was at least agreed to between the leadership of the other body and the administration, a matter that will be coming here and the Senate will have an opportunity to express its will on that matter.

But I wanted to speak on it for a moment, at least as Chairman of the Senate Banking Committee that will have at least a small part of that discussion, because of the inclusion of the FHA proposals as well as the loan limits within the GSEs, which I commend the administration for including. These are critical elements.

We must, of course, deal with people's problems. But is something else again to deal with the problems that have caused people's problems. In my view, the deeper problem is the foreclosure crisis. That is the underlying issue, in my view, and therefore to have dealt with a short-term stimulus package that did not include some measures and steps that would address the housing issue and the foreclosure issue would have been shortsighted. So I was pleased to see that in addition with some rebates and refundable tax assistance, even to those who have very limited incomes, as well as assistance to those with young children and families. All are wonderful ideas.

I know Senator BAUCUS, who will have the bulk of the responsibility in the Finance Committee for dealing with this, along with others who want to add elements of dealing with such things as unemployment insurance or food stamps or low-income energy assistance and the like, will have some additional thoughts on this short-term package. But I felt it was important to express some optimism about the direction it is going in and to note how important it is for consumers and investors to begin to have their confidence restored.

#### FISA

Mr. DODD. Mr. President, I rise this morning to continue the debate and discussion on the Foreign Intelligence Surveillance Act. Let me underscore the point that Majority Leader REID and others have made. I listened carefully to the comments of Senator MCCONNELL, the distinguished Republican leader.

I have served in this body for more than a quarter of a century now, and it

is unfortunate that we seem to have come to a point where not as much is happening as should be happening, in my view.

I brought committee products to the floor on many occasions, and I am sort of envious of the remarks of the Senator from Kentucky—because as a committee chairman, I love nothing more than to bring a product out of my committee. Many times I brought them out with unanimous votes, only to have to spend days here on the floor as amendment after amendment was being offered to change, in some cases dramatically, the substance of our bill, which we had worked on for weeks and months and years in some cases.

So it is a new idea here to just accept committee product and say the other 90 or 85 Members should respect the work of our colleagues, and acknowledge that and pass the legislation as if we had all had some input here. That is unique and, I suppose, an idea that most of us would like to embrace at one point or another. But this is the Senate. This is not an operation that runs by fiat.

This institution has an historic responsibility. In this institution, every single Member has the opportunity to express themselves, not only rhetorically for unlimited amounts of time, but also with the ability to contribute to the policy products we frame. To suggest that other Members, including members of a committee that had commensurate jurisdiction, the Judiciary Committee, ought to be excluded from adding their thoughts and ideas, is ridiculous. Even members of both Committees, Judiciary and Intelligence, are excluded, such as Senator FEINGOLD. It was his amendment, as a member of both of these committees, that the Republican leadership would not even consider debating or acknowledging with a vote. So that is unique in any regard. Anyone who has observed this institution for more than an hour—or less—understands how this works.

So the idea that we should accept this bill because the President will sign it, is nice to hear, but I have been around long enough to know that Presidents will sign things they did not think they would in time, and particularly if we can add some thoughts that Members have.

I do not want to dwell on the procedural aspects of all of this, but I wanted to underscore the point that Senator REID, our leader, the majority leader, made this morning, on the unique idea that Members who have substantive ideas and thoughts and amendments should somehow stick them back in their pockets, accept the product of the Intelligence Committee and go home, because the President will sign that bill. I will be anxious to raise the argument in future dates when I bring a bill to the floor and I find that the Republican leadership is going to offer some amendments to my

ideas, reminding them of their eloquence in suggesting a different approach to the Foreign Intelligence Surveillance Act.

Last night, we saw into the heart of the minority's priorities. Since last month, day after day, opponents of retroactive immunity have been warning about its underlying motive: shutting up the President's critics. Pass immunity, we have said, and the debate will be shut down, the critics will be shut up, and the actions of the President's favored corporations will be shut in the dark for good.

Last night, we saw the mindset of the minority. Several of my Democratic colleagues have brought to the floor their carefully prepared amendments, many of which do their part to right the balance between security and civil liberties.

The Cardin amendment, which would allow us to revisit the bill in 4 years instead of 6, not exactly a frightening proposal. It would be a simple debate; we could decide if he's right or wrong—make your case either way. I happen to believe he is right. Amendments from Senator FEINGOLD prohibiting the dangerous and possibly unconstitutional practice of reverse targeting and bulk collection. The Leahy amendment, requiring the inspectors general of the Director of National Intelligence and the Department of Justice and the National Security Agency to investigate possible illegal domestic spying. The Feinstein-Nelson amendment allowing the FISA Court to determine whether immunity should apply to the telecommunications companies; and several more amendments as well.

These are all very serious amendments. The Presiding Officer himself has one of these amendments. Some of them I support, others I would probably end up opposing. Nonetheless, I acknowledge the seriousness of their proposals.

I am concerned, however, about amendments that expand the authority of the FISA Court beyond what Congress intended when it originally passed FISA. While I respect the motives behind such proposals, Congress needs time to fully consider their implications.

Further, I am concerned that such proposals put excessive power in the hands of a secret court whose members are all appointed by one individual. In other words, I am concerned this is yet another concentration of power, the implications of which we don't fully understand and ought to consider carefully. Yes, secrecy is necessary at times in the life of every nation. But it is a bedrock principle that democracy should always err on the side of less secrecy. For that reason I believe cases against the telecoms are best handled in our standard Federal courts—which, by the way, have shown time and time again that they know how to protect State secrets.

None of that is the real issue this morning. Whether you agree with any

of these proposals or not, each amendment deserves consideration. Senators are not entitled to see their amendments agreed to, but they are entitled to this: a good-faith debate, honest criticism, and, ultimately, a vote on their ideas. Last evening, they didn't get that. Our Republican colleagues, assuming they would lose those votes, effectively shut down the work of the United States Senate. In the words of the cliché, they have taken their ball and run home.

I don't think that is far off base, in seeing in this egregious shutdown a parallel to retroactive immunity itself. Both attitudes privilege power over deliberation, over consensus, over honest argument. Like immunity, pulling these amendments down shows a contempt for honest debate and a willingness to settle issues in the dark, in the back rooms, rather than in the open, where the law lives, where the American people can see it.

President Bush wants to shut down the courts whose rulings he doesn't like. Last night, Senate Republicans showed when they don't like the outcome of a debate, they shut down that as well. It is one thing for a President to express that kind of contempt for the process of legislation. It is yet another for the coequal Members of this legislative branch to express it themselves.

I have spoken repeatedly about the rule of law. The rule of law is not some abstract idea. It is here with us. It is what makes this body run and has for more than two centuries. It means we hear each other out. We do it in the open. And while the minority gets its voice, its right to strenuously object, the majority ultimately rules. Standing for the rule of law anywhere means standing for it everywhere—in our courts and in the Senate.

The circumstances are different, of course, but the heart of the matter is the same. Last evening, I believe the Republican Party forfeited its claim to good faith on this issue. They are left to stake their case on fear. Whether that be enough, the next few days will tell.

But I want to talk about the issue of the underlying bill, the substance of it. As my colleagues here know, I care deeply and passionately about several aspects of this bill. Again, I have great respect for the work it takes to strike the balance between the need for have surveillance of those terrorists who would do us great harm, and the protection of civil liberties, rights, and the rule of law. It is not an easy balance. I will be the first to acknowledge that the tension between those two goals has been an ongoing tension since the founding of this Republic. It is not just new since 9/11. It goes back to the very first days of our Republic.

In fact, James Madison spoke eloquently about the tensions in civil liberties and rights and, with a great deal of prescience, recognized that it is usually threats from outside our country

that have the most influence on endangering the rights and liberties we embrace at home. He acknowledged that more than two centuries ago.

So the debate we are engaged in today is a historic one, historic in the sense that it has been ongoing. No Member of this Chamber wants to sacrifice the security of our country, and my hope is that no Member of this body wants to sacrifice our liberties and rights either. I want to believe that very deeply. While we are debating how best to do that, my fear is that we are about to adopt legislation that will deviate from a 30-year history of actually achieving that sense of balance, by and large with the almost unanimous support of Members who have served here during that 30-year period.

I spoke yesterday about a crime that may have been committed against millions of innocent Americans: their phone calls, their faxes, their e-mails, every word listened to, copied down by Government bureaucrats into a massive database. I spoke about how our largest telecommunications companies leapt at the chance to betray the privacy and the trust of their own customers. That spying didn't happen in a panic or short-term emergency, not for a week, a month, or even a year. It went on relentlessly for more than 5 years. If the press had not exposed it, it would be going on at this very hour. This was not a question where a program started up and someone realized they had done something wrong, shut it down, and we discovered it later. This program has been ongoing and would have been ongoing arguably for years had the New York Times and a whistleblower not stepped forward to acknowledge its existence.

We saw how President Bush responded when this was exposed—not by apologizing, not even by making his best case before our courts, but by asking for a congressional coverup: retroactive immunity. He asked us to do it on trust. There are classified documents, he says, that prove his case beyond a shadow of a doubt, but, of course, we are not allowed to see them. I have served in this body for 27 years, and I am not allowed to see these documents! Neither are the majority of my colleagues.

And when we resist his urge to be a law unto himself, how does he respond? With fear. When we question him, he says we are failing to keep the American people safe.

Shame on the President and shame on these scare tactics.

I have promised to fight those tactics with all the power any one Senator can muster, and I am here today to keep that promise. For several months I have listened to the building frustration over this immunity and this administration's campaign of lawlessness. I have seen it in person, in mail, online—the passion, the eloquence of average citizens who are just fed up with day after day, week after week,

month after month, year after year of this administration, in one case after another, trampling all over the basic rights of American citizens. They have inspired me more than they know, these citizens who have spoken up.

But almost every time telecom immunity comes up, there is the inevitable question: What is the big deal? Why are so many people spending so much energy to keep a few lawsuits from going forward?

Because this is about far more than the telecom industry. This is about a choice that will define America—the rule of law or the rule of men. It is about this Government's practice of waterboarding, a technique invented by the Spanish Inquisition, perfected by the Khmer Rouge, and in between banned—originally banned for excessive cruelty even by the Gestapo.

It is about the Military Commissions Act, a bill that gave President Bush the power to designate any individual he wants as an unlawful enemy combatant, hold him indefinitely, and take away that individual's right to habeas corpus, the centuries-old right to challenge your detention.

It is about the CIA destroying evidence of harsh interrogation—or, as some would call it, torture.

It is about the Vice President raising secrecy to an art form.

The members of his energy task force? None of your business, we are told.

His location? Undisclosed.

The names of his staff? Confidential.

The visitor log for his office? Shredded by the Secret Service.

The list of papers he has declassified? Classified.

It is about the Justice Department turning our Nation's highest law enforcement offices into a patronage plum and turning the impartial work of indictments and trials into the machinations of politics.

It is about Alberto Gonzales coming before Congress to give testimony that was at best wrong and at worst perjury.

It is about Michael Mukasey coming before the Senate and defending the President's power to break the law.

It is about extraordinary renditions and secret prisons.

It is about Maher Arar, the Canadian computer programmer who was arrested by American agents, flown to Syria, held for some 300 days in a cell 3 feet wide, and then cleared of all wrongdoing.

It is about all of that. We are deceiving ourselves when we talk about the torture issue or habeas issue or the U.S. attorneys issue or the extraordinary rendition issue or the secrecy issue. As if each one were an isolated case! As if each one were an accident! We have let outrage upon outrage upon outrage slide with nothing more than a promise to stop the next one.

There is only one issue here—only one—the law issue. Attack the President's contempt for the law at any point, and it will be wounded at all

points. That is why I am here today. I am speaking for the American people's right to know what the President and the telecoms did to them. But more than that, I am speaking against the President's conviction that he is the law. Strike it at any point, with courage, and it will wither.

That is the big deal. That is why immunity matters—dangerous in itself but even worse in all it represents. No more. No more. This far, Mr. President, but no further.

More and more Americans are rejecting the false choice that has come to define this administration: security or liberty but never, ever both. It speaks volumes about the President's estimation of the American people that he expects them to accept that choice.

The truth, I would say, is that shielding corporations from lawsuits does absolutely nothing for our security. I challenge the President to prove otherwise. I challenge him to show us how putting these companies above the law makes us safer by one iota. That, I am convinced, he cannot do.

The truth is that a working balance between security and liberty has already been struck. It has been settled for decades. For three decades, the Foreign Intelligence Surveillance Act has prevented executive lawbreaking and protected Americans, and that balance stands today. In the wake of the Watergate scandal, the Senate convened the Church Committee, a panel of distinguished Members, Republicans and Democrats, determined to investigate executive abuses of power. Unsurprisingly, they found that when Congress and the courts substitute "trust me" for real and true oversight, massive law breaking can result. They found evidence of U.S. Army spying on the civilian population, Federal dossiers on citizens' political activities, a CIA and FBI program that opened hundreds of thousands of Americans' letters without warning or warrant.

In sum, Americans had sustained a severe blow to their fourth amendment right to be "secure in their persons, houses, papers, and effects against unreasonable searches and seizures." But at the same time, the Senators of the Church Committee understood that surveillance needed to go forward to protect the American people. Surveillance itself is not the problem: unchecked, unregulated, unwarranted surveillance was. What surveillance needed, in a word, was legitimacy. In America, as the Founders understood, power becomes legitimate when it is shared; when Congress and the courts check the attitude which so often crops up in the executive branch: If the President does it, it is not illegal.

The Church Committee's final report, "Intelligence Activities and the Rights of Americans," puts the case powerfully. Let me quote, if I can, from that report. The Church Committee—Republicans and Democrats—said:

The critical question before the Committee was to determine how the fundamental lib-

erties of the people can be maintained in the course of the Government's effort to protect their security. The delicate balance between these basic goals of our system of government is often difficult to strike, but it can, and must, be achieved.

We reject the view that the traditional American principles of justice and fair play have no place in our struggle against the enemies of freedom. Moreover, our investigation has established that the targets of intelligence activity have ranged far beyond persons who could properly be characterized as enemies of freedom. . . .

The report further states:

We have seen segments of our Government, in their attitudes and action, adopt tactics unworthy of a democracy, and occasionally reminiscent of the tactics of totalitarian regimes.

We have seen a consistent pattern in which programs initiated with limited goals, such as preventing criminal violence or identifying foreign spies, were expanded to what witnesses characterized as "vacuum cleaners," sweeping in information about lawful activities of American citizens.

The Senators concluded:

Unless new and tighter controls are established by legislation, domestic intelligence activities threaten to undermine our democratic society and fundamentally alter its nature.

That report is more than 30 years old. But couldn't those words have been written this morning? We share so much with the Senators—Republicans and Democrats—who wrote them. We share a nation under grave threat—in their case, from communism and nuclear annihilation; in ours, from international terrorism. We share, as well, the threat of a domestic spying regime that, however good its intentions, finally went too far.

Senators in my lifetime have already faced this problem, and I believe their solution stands: The power to invade privacy must be used sparingly, guarded jealously, and shared equally between all three branches—all three branches of Government.

Three decades ago, Congress embodied that solution in the Foreign Intelligence Surveillance Act, or FISA. FISA confirmed the President's power to conduct surveillance of international conversations involving anyone in the United States, provided that the Federal FISA Court issued a warrant, ensuring that wiretapping was aimed at safeguarding our security, and nothing else.

The President's own Director of National Intelligence, Mike McConnell, explained the rationale in an interview this summer: The United States, he said: "did not want to allow [the intelligence community] to conduct . . . electronic surveillance of Americans for foreign intelligence unless you had a warrant, so that was required."

As originally written in 1978, and as amended many times over the last three decades, FISA has accomplished its mission. It has been a valuable tool—a tremendously valuable tool—for conducting surveillance of terrorists and those who would harm our country.

Every time Presidents have come to Congress openly to ask for more leeway under FISA, Congress has worked with them; Democrats and Republicans have negotiated; and together, Congress and the President have struck a balance that safeguards America while doing its utmost to protect privacy.

This summer, Congress made a technical correction to FISA, enabling the President to wiretap, without a warrant, conversations between two foreign agents, even if those conversations are routed through American computers. For other reasons, I felt this summer's legislation went a bit too far, and I opposed it. But the point is that Congress once again proved its willingness to work with the President on FISA.

Shouldn't that be enough?

Just this past October and November, as we have seen, the Senate Intelligence and Judiciary Committees worked with the President to further refine FISA and ensure that, in a true emergency, the FISA Court could do nothing to slow down intelligence gathering.

Shouldn't that be enough?

And as for the FISA Court? Between 1978 and 2004, according to the Washington Post, the FISA Court approved 18,748 warrants—18,748 warrants. It rejected five, between 1978 and 2004. Let me repeat the numbers. They granted 18,748 warrants, and rejected 5 of them over that almost 30-year period.

The FISA Court has sided with the executive 99.9 percent of the time.

Shouldn't that be enough? One would think so. Is anything lacking? Have we forgotten something? Isn't all of this enough to keep us safe?

It took three decades, three branches of government, four Presidents, and 12 Congresses to patiently, painstakingly build up that machinery. It only took one President to tear it down. Generations of leaders handed over to President Bush a system that brought security under the law, a system primed to bless nearly any eavesdropping he could possibly conceive or think of. And he responded: No, thank you; I'd rather break the law.

He ignored not just a Federal court but a secret Federal court; not just a secret Federal court but a secret Federal court prepared to sign off on his actions 99.9 percent of the time. And he still has not given us a good reason why. He still has not shown how his lawbreaking makes us safer.

So I am left to conclude that, to this President, this is not about security. It is about power: power in itself, power for itself.

I make that point not to change the subject, but because I believe it solves a mystery. That is: Why is retroactive immunity so vital to this President? The answer, I believe, is that immunity means secrecy; and secrecy, to this administration, means power.

It is no coincidence that the man who declared "if the president does it, it's not illegal"—Richard Nixon—was

the same man who raised executive secrecy to an art form in an earlier generation. The Senators of the Church Committee expressed succinctly the deep flaw in the Nixonian executive. I quote from them: "Abuse thrives on secrecy." And in the exhaustive catalog of their report, they proved it.

This administration shares a similar level of secrecy, and a similar level of abuse, I would add. Its push for immunity is no different. Secrecy is at its center. We find proof in their original version of retroactive immunity. Remember, this was their idea: a proposal not just to protect the telecoms but everyone involved in the wiretapping program. That is what they sought of the Intelligence Committee. Everyone involved in that program was to be protected. In their original proposal, that is, they wanted to immunize themselves.

Think about that. It speaks to their fear and, perhaps, their guilt: their guilt that they had broken the law, and their fear that in the years to come they would be found liable or convicted. They knew better than anyone else what they had done. They must have had good reason to be afraid.

Thankfully, immunity for the Executive is not part of the bill before us. But the original proposal—the original proposal—to immunize everyone involved ought to be instructive to Members here. Why did they seek such broad authority to immunize every individual? Why? What was behind that proposal? This is, and always has been, a self-preservation bill.

Otherwise, why not have the trial to get it over with? If the President believes what he says, the corporations would win in a walk. After all, in the administration's telling, the telecoms were ordered to help the President spy without a warrant, and they patriotically complied.

Read Justice Robert Jackson's briefs after Nuremberg. The 21 defendants at Nuremberg made that case, that they were only complying with orders they were given. And the court in the Nuremberg trials, in 1945, rejected that argument. Robert Jackson reminded us, in subsequent decisions he handed down as a Supreme Court Justice, that that argument, "we were ordered to do it," is not a legitimate defense when you know what you are doing is wrong.

And when you hear the President's story, ignore for a moment that in America we obey the laws, not the President's orders. Ignore that the telecoms were not unanimous; one, Qwest, wanted to see the legal basis for the order. They never received it, of course, and so they refused to comply. Ignore that a judge presiding over the case ruled that—and I quote—"AT&T cannot seriously contend that a reasonable entity in its position could have believed that the alleged domestic dragnet was legal."

Ignore all of that. If the order the telecoms received was legally binding, they have an easy case to prove. The

corporations only need to show a judge the authority and the assurances they were given, and they will be in and out of court in five minutes.

If the telecoms are as defensible as the President says, why doesn't the President let them defend themselves? If the case is so easy to make, why doesn't he let them make it?

It can't be that he is afraid of leaks. The Federal court system has dealt for decades with the most delicate national security matters, building up expertise in protecting classified information behind closed doors—*ex parte*, in camera. We can expect no less in these cases, as well.

No intelligence sources need to be compromised. No state secrets need to be exposed. And after litigation at both the district court and circuit court level, no state secrets have been exposed.

In fact, Federal District Court Judge Vaughan Walker, a Republican appointee, I might add, has already ruled that the issue can go to trial without putting state secrets in jeopardy. Judge Walker reasonably pointed out that the existence of the President's surveillance program is hardly a secret at all. I quote from him. He stated:

The government has [already] disclosed the general contours of the "terrorist surveillance program," which requires the assistance of a telecommunications provider.

That is from Judge Walker. In his opinion, Judge Walker argued that even when it is reasonably grounded:

the state secrets privilege [still] has its limits. While the court recognizes and respects the executive's constitutional duty to protect the nation from threats, the court also takes seriously its constitutional duty to adjudicate the disputes that come before it. To defer to a blanket assertion of secrecy here would be to abdicate that duty, particularly because the very subject matter of this litigation has been so publicly aired.

That is Republican appointee Vaughan Walker speaking to the administration. He further goes on to say:

The compromise between liberty and security remains a difficult one. But dismissing this case at the outset would sacrifice liberty for no apparent enhancement of security.

That ought to be the epitaph of this administration: sacrificing liberty for no apparent enhancement of security. Worse than selling our soul, we are giving it away for free.

The President is equally wrong, I would suggest, to claim that failing to grant this retroactive immunity will make the telecoms less likely to cooperate with surveillance in the future. The truth is that since the 1970s, FISA has compelled telecommunications companies to cooperate with surveillance when it is warranted. And what is more, it immunizes them. It has done that for more than 25 years.

So cooperation in warranted wiretapping is not at stake today. Collusion in warrantless wiretapping is. And the warrant makes all the difference,

because it is precisely the court's blessing that brings Presidential power under the rule of law.

In sum, we know that giving the telecoms their day in court—giving the American people their day in court—would not jeopardize an ounce of our security. The conclusion, I again repeat, is clear: The only thing that stands to be exposed if these cases go to trial is the extent of the President's lawbreaking, of the administration's lawbreaking. That, he will keep from the light of a courtroom at all costs.

This is a self-preservation bill. And given the lack of compelling alternatives, I can only conclude that self-preservation—secrecy for secrecy's sake—explains the President's vehemence.

Well, you might say, he will be gone in a year. Why not let the secrets die with this administration and start afresh? Why take up all the time on this matter?

Because those secrets never rightfully belonged to him. They belong to history, to our successors in this Chamber, to every one of us. Thirty years after the Church Committee, history repeated itself. If those who come after us are to prevent it from repeating again, they need the full truth. We need to set an unmistakable precedent. Determining guilt or innocence belongs to the courts, not to 51 Senators who may carry the day by a vote here, or the President, for that matter—that is what the courts are for. Lawless spying will no longer be tolerated. And, most of all, the truth is no one's private property.

Which brings us, unfortunately, to economics. Because once the arguments from state secrets and patriotic duty are exhausted, immunity's defenders make their last stand as amateur economists.

Here is how Mike McConnell put it:

If you play out the suits at the value they're claimed, it would bankrupt these companies. So . . . we have to provide liability protection to these private sector entities.

To begin with, that is a clear exaggeration. We are talking about some of the wealthiest, most successful companies in America. Let me quote an article from Dow Jones MarketWatch. The headline reads: "AT&T's third-quarter profit rises 41.5 percent." I will quote the article:

AT&T, Inc. on Tuesday said third-quarter earnings rose 41.5 percent, boosted by the acquisition of BellSouth and the addition of 2 million net wireless customers. . . . Net income totaled \$3.6 billion . . . compared with \$2.17 . . . a year ago.

I should note that AT&T has posted these record profits at the same time of this very public litigation.

Now, granted, that is only one quarter, and I understand that AT&T's most recent earnings aren't as large as the ones I have just quoted; but I think the point still stands. A company of that size, capable of posting a \$3 billion quarter, couldn't be completely wiped

out by anything but the most exorbitant and unlikely judgment.

To assume that the telecoms would lose and that their judges would hand down such backbreaking penalties is already taking several leaps. The point, after all, has never been to financially cripple our telecommunications industry; the point is to bring checks and balances back to domestic spying. Setting that precedent would hardly require a crippling judgment.

It is much more troubling, though, that the Director of National Intelligence has begun talking like a stockbroker, pronouncing on "liability protection for private sector entities." How does that even begin to be relevant to letting the case go forward? Since when did we throw out entire lawsuits because the defendant stood to lose too much?

Translate the point into plain English, and here is what Admiral McConnell is arguing: Some corporations are too rich to be sued. Even bringing money into the equation puts wealth above justice, above due process. I have rarely in public life heard an argument as venal as this one.

But this administration would apparently rather protect the telecoms than the American people. In one breath, it can speak about national security and bottom lines. Approve immunity, and Congress will state clearly: The richer you are, the more successful you are, the more lawless you are entitled to be. A suit against you is a danger to the Republic. So at the rock bottom of its justifications, the administration is essentially arguing that immunity can be bought.

The truth is exactly the opposite, in my view. The larger the corporation, the greater potential for abuse. Not that success should make a company suspect at all. Companies grow large and essential to our economy because they are excellent at what they do. I simply mean that size and wealth open the realm of possibilities for abuse far beyond the scope of the individual. After all, if everything alleged is true, the President and the telecoms have engineered one of the most massive violations of privacy in American history. A violation such as that would be inconceivable without the size and resources of a corporate behemoth behind it.

If reasonable search and seizure means opening up a drug dealer's apartment, the telecoms' alleged actions would be the equivalent of strip-searching everyone in the building, ransacking their bedrooms, and prying up all the floorboards. That is the massive scale we are talking about, and that massive scale is precisely why no corporation must be above the law.

Ultimately, that is all I am asking—not a verdict of guilty or innocent. I have my own views, but I don't have a right to pronounce those views. That is why there is something called the third branch of Government. It is called the courts—the courts. A simple majority

of this body doesn't get the right to decide the guilt or innocence in this particular case. But when the day in court comes, I have absolutely no investment in the verdict either way. Just as it would be absurd for me to declare the telecoms clearly guilty, it would be equally absurd to close the case today without a decision. But their day in court, as far as I am concerned, is everything.

Why? Because surveillance demands and deserves legitimacy, and the surest way to throw legitimacy away is to leave all of these questions hanging.

Few things are as vital to our national security as giving domestic surveillance the legitimacy it deserves and needs to sustain public support. Because "the threat to America is not going to expire." "Staying a step ahead of the terrorists who want to attack us" is "essential to keeping America safe." In the end, "Congress and the President have no higher responsibility than protecting the American people from enemies who attacked our country and who want to do it again."

Those aren't my words; they are George Bush's words. He says all of this, yet he says he will veto the entire bill—this vital bill, this bill which is essential to protecting our very lives—all to keep a few corporations safe from lawsuits.

There, at last, as honest as you will ever hear them, are this President's true priorities: secrecy over safety, favors over fairness. Marry those priorities to a contempt for the rule of law, and the results have been devastating. I don't have to repeat them. They aren't secret anymore.

No, Mr. President we can't go back. We can't un-pass the Military Commissions Act. We can't un-destroy the CIA's interrogation tapes. We can't unspeak Alberto Gonzales's disgraceful testimony. We can't un-torture those who have been apprehended and held wrongfully. We can't undo all this administration has done in the last 6 years for the cause of lawlessness and fear.

But we can do this: We can vote down this immunity. We can do this: We can grab hold of the one thread left to us here and pull until the whole garment unravels. We can start here.

And why not here? Why not today?

Why not provide for the protections we need, the surveillance we need, but without this grant of immunity? It is unwarranted, it is unnecessary, it is unfair, it is wrong, and it is dangerous.

So, on Monday, I hope my colleagues will reject the motion on cloture, allow these amendments to go forward, allow us to have a debate and a discussion, and then send a clean bill to the President—one that enhances our security and protects our civil liberties.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee is recognized.

Mr. ALEXANDER. Mr. President, I ask unanimous consent to speak as in morning business.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ALEXANDER. I ask unanimous consent that when I finish with my remarks, the Senator from Texas be recognized.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### REPUBLICAN RETREAT

Mr. ALEXANDER. Mr. President, I would say to the Senator from Connecticut, welcome back. We are glad to have him here. He has traveled some roads that I know pretty well. We have missed some of his vigor and passion.

Sometimes the American people say they don't like to see us engage in partisan bickering, and I am going to say something about that in just a minute. But what I think they do like to see us do, if I may say so, is what the Senator from Connecticut was doing just then and what the Senator from Arizona did on Friday: They were debating the balance of each American individual's right to liberty versus each American individual's right to security—coming to different conclusions but having a serious discussion about an issue that affects every single American in this country. That is what the people expect of the Senate.

I come to a different conclusion than he does. We are moving to vote on cloture on a bill on Monday that has come out of the Intelligence Committee by a bipartisan majority of 13 to 2. But this is the kind of debate the Senate ought to have, and I am glad I got to hear his speech even though I disagree with much of it.

The Republican Senators gathered in a retreat at the Library of Congress on Wednesday. This is something we do each year, and the Democratic side does it each year as well. We think about our responsibilities, and we look forward to the future. Many of our Members have said to me that this was one of our best days of retreat. In the first place, it was very well attended: 44 out of 49 of us were there, and 3 of those absent were campaigning in Florida, and 1 was ill. So we had virtually perfect attendance. Most of those attending spoke and participated and made proposals. Every single Republican Senator with whom I have talked since that meeting on Wednesday has told me he or she felt rejuvenated and looks forward to this year. I believe the reason for that is because of the way we conducted the day.

It takes me back to what I just said a moment ago. Unless we are tone-deaf, I think we can hear what the American people are saying to us, especially through the Presidential campaign, which is that they are tired of the way we are doing business in Washington, DC, and they want us to change it. They want us to take the playpen politics and move it off the Senate floor and put it in the national committees or in the nursery where it belongs, and spend our time on big issues that affect

our country—maybe in vigorous debates of the kind Senator DODD and Senator KYL would have on the intelligence bill, but spend our time on the serious issues facing our country. Then, after we have had our debate, work across the aisle to get a result.

There are only two reasons to work across the aisle to get a result. One is, it is the right thing to do for our country. This is our job, and that is why they pay us our salaries. That is why they sent us here. No. 2, if you can count, it takes 60 votes to get anything meaningful done in the Senate. So if you want to get a result, you have to work across party lines because neither side has more than 60 votes.

So what we Republicans did on Wednesday was say this: We have heard the talk that this is a Presidential year and we may get nothing done in Congress, and we reject that.

Our leader said—MITCH MCCONNELL—on Tuesday when he spoke:

Republicans are eager to get to work on the unfinished business from last year. We are determined to address the other issues that have become more pressing or pronounced since we last stood here. We have had a presidential election in this country every 4 years since 1788 we won't use this one as an excuse to put off the people's business for another day.

So there is no excuse for Congress to take this year off, given the serious issues facing our country. We want to change the way Washington does business, and we know how to do it; that is, get down to work on serious issues facing our country, propose specific solutions that solve problems, and then work across the aisle to get a result. We are not here to do bad things to Democrats; we are here to try to do good things for our country.

That was the spirit of our retreat on Wednesday. I believe that is the way most Members on the other side feel. The more of that we do, the better. I would submit the approval rating of the Congress and of Washington, DC, will gradually go up if we were to do that.

Let me say a word about exactly what we talked about on Wednesday—the kind of approach that one can expect from Republican Senators this year.

First, of course, is that we are here and ready to go to work on these specific solutions based on Republican principles, and we are either looking for bipartisan support or already have bipartisan support on many issues. Of course, to begin with, we know Americans are hurting and anxious because of the housing slump, because of gasoline prices, because of rising health care costs, and we are ready to work with the House and the President, across the aisle, to find the appropriate action to take to try to avoid an economic slowdown.

I imagine the Senate will have some of its own views about its proposals when the House brings its proposal here. But we want a result. I, for one, would like to see—and I believe most of

my colleagues on this side of the aisle would like to see—a proposal that grows the economy and not the Government. But we will have a debate about that. That is not partisan bickering; that is the Senate in its finest tradition addressing an issue that is central to every single family in this country.

We know we need to intercept the communications of terrorists so we can keep our country safe from attack. We know when we do that, we have to carefully balance each of our right to liberty versus each of our right to security.

Samuel Huntington, the Harvard professor, once wrote—he was President of the American Political Science Association—that most of our politics is about conflicts between principles or among principles with which almost all of us agree. That is important to Americans because what unifies us, other than our common language, is these few principles, security and liberty being two.

Republicans support the Rockefeller-Bond bipartisan proposal which passed 13 to 2 by the Intelligence Committee. We want to make sure those companies which help us defend ourselves aren't penalized for helping to make the country secure, while at the same time protecting individual liberties.

We know there are 47 million Americans who don't have health insurance, and Republican Senators said in our retreat on Wednesday that we are ready to go to work this year to make sure every American is insured. Some say put it off a year. Well, perhaps we can't get it all done in 2008, but we can surely start. Senator BYRD and Senator DEMINT and Senator BENNETT and Senator CORKER, among others, spoke at our retreat on this issue. We would like to get going now. We could begin with the Small Business Health Insurance Act, which would permit small companies to pool their resources and offer more health insurance at a lower cost to their employees. That would be a beginning.

Many of us on the Republican side have sponsored a bipartisan bill—one of two or three that have the same general approach to reforming the Tax Code, to put cash in the hands of American families and individuals so they can afford to buy their own private insurance, putting together four words that usually don't go together: "universal access" and "private insurance." Those are based on principles we Republicans agree with: free market and equal opportunity. We know on this side of the aisle—and I suspect many over on that side know as well; I know they do—if we don't do something about the runaway growth of Medicare and Medicaid—entitlement spending, in other words—we will bankrupt our country. Every year that we wait to deal with that is a year that makes the solution harder.

So Senator GREGG, at our retreat, talked about his proposal with Senator

CONRAD, a Democratic Senator, to create a base-closing-task-force-type task force for the sole purpose of recommending to the Congress a way to control entitlement spending and force an up-or-down vote on that. That is the principle of limited government. That is a principle that most Republicans and a proposal that many Democrats can support.

We know there is a great force in Washington, DC, to spend more money, to issue more regulations and rules, and there are almost no countervailing forces to spend less money, repeal rules, and revise regulations. So Senators DOMENICI, ISAKSON, and SESSIONS, among others, have proposed an idea to change our budgeting and appropriations process from 1 year to 2 years. That may help us get appropriations bills done on time so we can save money in our contracting in the Defense Department and Department of Transportation, for example. But more important to me, and to many on this side of the aisle, it would create a countervailing force of oversight so that every other year we would spend most of our time on oversight, meaning we could review, repeal, and change and improve laws, regulations, and rules that have been in place for a long time.

We want to keep jobs from going overseas, and we believe we know how to do it. Last year, we worked with Senator BINGAMAN and others on the other side to pass the America COMPETES Act. This is an extraordinary response to our challenge to keep our brain power advantage so we can keep our jobs, in competition with China and India. Senator HUTCHISON has been a leader on this issue. She, with Senator BINGAMAN, began the effort to fully fund advanced placement courses so more children could take those courses. So we are ready—many on this side of the aisle—to implement the advanced placement provisions in the America COMPETES Act. That will help 1.5 million children to have those opportunities.

We are ready to implement the provision that would put 10,000 more math and science teachers in our classrooms. Many of us are ready to implement the recommendation that we pin a green card to every single foreign student legally here and who graduates from an American university in science, technology, engineering, or mathematics. Some proposals ought to be bipartisan, but they are not—or at least they weren't. I made one, and we talked about this for a while on Wednesday.

In order to encourage unity in this country, we need a common language. That seems to be common sense. Therefore, we ought to pass a law making it clear that the Federal Government should not be suing the Salvation Army, telling them they cannot require employees to speak English on the job. We got it through the Senate and to the House, where the Speaker stopped it. Now Senator CONRAD has

joined in support, as have Senators MCCONNELL, BYRD, LANDRIEU, and NELSON of Nebraska. So now we have a bipartisan approach on another important issue.

We talked about the idea and the problem of the number of rural women in this country who are pregnant and cannot get the proper prenatal health care. OB/GYN doctors are leaving rural areas because runaway malpractice lawsuits are running malpractice insurance over \$100,000 a year. So the pregnant women are having to drive 70 miles to Memphis or other big cities to see a doctor and get the prenatal health care they need and to have the baby. We have proposals to stop it in the way Texas and Mississippi did. We invite bipartisan proposals on that.

Mr. President, the Republican agenda will emerge over time. What I would like to say to our colleagues on the other side of the aisle and to the American people is, we want to change the way Washington does business, and we believe we know how. The way is to stand up every single day and week with new specific proposals on real issues and have a debate where one is needed. Let Senator DODD and Senator KYL have a principled argument about security versus liberty. That is in the finest tradition. Let's cut out the playpen politics. Let's don't have that, and let's earn back the confidence of the American people by dealing with specific solutions. That is what you are going to hear from Republican Senators.

No sooner had I heard some encouraging remarks from the majority leader, out comes this release from the Senate leadership and majority leader HARRY REID:

For immediate release. Democratic policy experts discuss President Bush's legacy of broken promises.

That was announced. This is playpen politics. I am sure we do it here sometimes, but I will do my best as the Republican conference chairman to make the political reward for this playpen politics so low that this kind of release and activity is moved into the nursery school where it belongs, over to the national committee where it belongs, whether it is the Democratic playpen or the Republican playpen, and that we devote ourselves to the issues facing our country.

How can we help the economy? How can we help every American be insured? How can we stop the terrorists? How can we implement the America COMPETES Act? Those are the debates we ought to have. I hope that is clear to the American people and to our colleagues. We are looking forward to this year. Republicans are ready for change in the way we do business in Washington. The people of this country are ready for that, too. I look forward to it.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I express my gratitude to Senator ALEXANDER, my colleague from Tennessee, for his comments and for his leadership. We decided it would be helpful to come to the floor and talk a little bit about the retreat that Senator ALEXANDER laid out and our reasons for believing that it is important that we not take the year off just because it is a Presidential election. I think Senator MCCONNELL most recently pointed out that we have had elections in this country every 2 years since 1788. So if we are going to use that as an excuse for not getting things done, we will never get anything done. We have a lot of important issues we need to address, and we will.

The month or so that we were in recess, from the Wednesday before Christmas until we came back the day after Martin Luther King's national holiday, I enjoyed being at home in Texas. As always, I traveled around the State and talked to a lot of people. But I also listened. What I heard from my constituents is the same thing I bet virtually every single Senator heard, and that is that people are sick and tired of the bickering and partisanship. They are sick and tired of seeing Congress not solving problems that only Congress can solve. Frankly, they are beginning to feel more and more like Congress is irrelevant to their daily lives. I think that is what accounts for the historically low approval rating we have seen of the Congress in the last year.

The problem is—and the occupant of the chair knows as well as I do—that I don't think the public differentiates between Republicans and Democrats when they give Congress a low approval rating, by and large. I think it is up to us, working together, to try to elevate that low approval rating by doing what our constituents expect us to do, and that is to work together when we can, without sacrificing our basic principles.

Let me say a word about that. Lest anybody confuse what Senator ALEXANDER and I are saying, that we are somehow taking leave of our principles, that is absolutely not true. In Washington, I usually tell folks that we have Democrats in Texas and we have Republicans in Texas. They are all pretty much conservative by national standards, Washington standards. But the fact is, my constituents expect for me to get something done. But that is not done by sacrificing principles. I do think we have important differences, and I think those should be debated, and then we should vote. We should be held accountable in the next election for our votes and for what we have done or not done.

I think there is an important difference between standing on your principles and then looking for common ground to try to come together and solve problems. I agree with what the Senator from Tennessee said. We all know it is a fact of life in the Senate

that you cannot get anything done without bipartisan support. Our 60-vote rule for cloture to close off debate in order to have an up-or-down vote requires it. So why not recognize that, sure, we can say no, no, no, but occasionally I think we ought to look for an opportunity to say yes where it doesn't sacrifice our principles, but it does find common ground to try to get things done on behalf of the American people.

I have constituents who asked me, as recently as last night: Don't you find life in the Senate and in Washington and in the Congress frustrating? Many say I could never do what you do because I would be so frustrated by it. I think there is plenty of opportunity for frustration, if we dwell on that. But I prefer to look at the opportunities for making life better for the American people and for offering solutions on the difficult issues that confront us. To me, that is what I get up and come to work for. That is why I enjoy being in the Senate. I believe it gives me a chance, as one American, to do what I can to try to make life better and to make a difference. It is not about sacrificing principles. It is doing what we said in the preamble to the Constitution when we said:

We the People of the United States, in Order to form a more perfect Union, establish Justice, ensure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity.

We said that in 1787, in a document that was ratified by all of the States by 1790. That should be our goal still today—to be true to that statement of principle about what our goals are as a nation.

The Senator from Tennessee did go through a number of concrete proposals and talked about what our alternative will be to the proposals being made on the other side of the aisle. Again, I agree with him, that the American people don't expect us to come here and split the difference on everything in order to come up with an agreement if they believe that outcome is devoid of principle or sacrifices fundamental values. There are differences between the parties. Those differences ought to be reflected in a dignified and civilized and respectful debate that highlights those differences, and then we have a vote on those different points of view. We will either pass legislation or not based on that vote. But I think it will be acting in the greatest tradition of the Senate, and in a way that our constituents back home earnestly wish we would act and, unfortunately, in a way that we have not always acted.

I have to believe all Members of this body want to see our economy as strong as it can possibly be going forward. They want to see that our Nation is secure and our defense remains the best in the world; that all Americans have access to quality health care; that

taxpayers not be compelled to foot the bill for wasteful Washington spending. I have to believe that all of our constituents, and indeed all Members of the Senate, believe that we need a sustainable energy policy that allows us to turn away from our over-reliance on imported oil and gas from dangerous parts of the world.

I think, as Senator ALEXANDER pointed out, principled differences on important legislation need to be debated in the Senate and voted on and resolved rather than be left without a solution and unaddressed.

We do have an opportunity, I believe, this new year as we have come back not just to say no, no, no, to every idea that is offered on the floor but to say: Here are our alternative solutions to the problems that confront America.

Mr. President, you will be hearing us on the floor of the Senate on a weekly basis not only addressing legislation offered by the majority—and, of course, it is the majority leader's prerogative to set the agenda to call up bills; we will not be able to do that as Members of the minority—but what you will hear from us is a principled proposal to solve the problems that confront America on each of the big issues this Nation wants us to address and wants us to expend our very best efforts to try to solve.

I am delighted we have seen a sort of renewed enthusiasm for finding solutions in a principled way. I agree with the Senator from Tennessee, the retreat we had I thought was one of the most hopeful retreats I have ever participated in as a Member of the Senate because I think what we saw is a recommitment to try to solve problems, to avoid the partisan bickering and the divisiveness that has resulted in the historically lower approval rating of Congress and which turns off so many of our constituents.

Of course, as we all know, as elected officials, if we do not respond to our employer and try to address the concerns our employer has—and our employers are our constituents—then our employers may look for somebody else to do the job in the next election.

It is up to us to be responsive to those concerns, and I think without sacrificing principles, by staying true to those values we brought with us but looking for common ground. That is the art in our job, and it is more art than science. I have said it before and I will say it again, I think compromise for compromise's sake is overrated because if all compromise means is sacrificing your principles in order to get a problem behind you, I don't think you have done your job. Doing your job means standing on your principles but looking for common ground, consistent with those principles, to solve problems. There is plenty of common ground to find if we will work a little bit harder and a little bit more in earnest to try to find it.

I yield the floor, and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. BOND. Mr. President, I ask unanimous consent that the Senate recess subject to the call of the Chair.

There being no objection, the Senate, at 12:04 p.m., recessed subject to the call of the Chair and reassembled at 12:07 p.m., when called to order by the Presiding Officer (Ms. KLOBUCHAR).

Mr. BOND. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WHITEHOUSE. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### FISA AMENDMENTS ACT OF 2007— Continued

Mr. WHITEHOUSE. Madam President, I ask that the pending amendment be set aside so I may call up amendment No. 3905.

The PRESIDING OFFICER. Is there objection?

Mr. BOND. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. WHITEHOUSE. Madam President, I guess I would like to start by saying I appreciate very much the sentiments that were recently expressed by the Senator from Tennessee and the Senator from Texas, who is my friend who served with me as attorney general at the same time in our respective States, Texas and Rhode Island. I ask them to let me know when that new approach will begin because I am, frankly, not seeing much of it in the Foreign Intelligence Surveillance Act procedures we are going through on the floor. I confess, I am a new Member of this body, and I do not understand why.

We heard Senator DODD, the very distinguished Senator from Connecticut, who has served in this body for 27 years, describe how important this Chamber is and that it is the right of Senators to debate matters, not for the sake of ventilating themselves but toward actually getting a vote on a real amendment on a matter of real significance.

We had one vote on a committee amendment. Not one Senator has achieved getting a vote, and we are on a very short timeframe. I may be new, but I will tell you that in the 1 year I have served, I have presided a great