to issue orders for domestic surveillance on particular targets.

Congress specifically left foreign surveillance activities to the executive branch and to the intelligence community. The FISA Court, they are article III judges who are called in from time to time to make the judgments of probable cause for issuing warrants. They have expertise in issuing warrants for surveillance on a domestic basis.

The bill before us gives them that responsibility, as did the other FISA, the old FISA, for issuing those orders for people or facilities in the United States. The old one said ''facilities in the United States.''

Well, that court is not set up to deal with foreign intelligence surveillance. As I quoted yesterday, the court's own words said—and this is the December 11, In re: Motion for Court Records. The court stated that: The FISA Court judges are not expected to or desire to become experts in foreign intelligence activities and do not make substantive judgments on the propriety or need for a particular surveillance. Even if a typical FISA judge has more expertise in national security matters than a typical district court judge, that expertise would still not equal that of the executive branch which is constitutionally entrusted with protecting national security.

So I expect we will get to the point where we will be debating the distinguished Senator's assessing compliance amendment. But he has brought today the substitution amendment.

I have already explained why we could not get through signals collection immediately after 9/11 if we had gone to the old FISA. How many months would it have taken? Well, the leaders who apparently spoke with the intelligence community and the White House said they did not want to highlight the fact that we were going to be listening in and they did not think it would work quickly.

The intelligence committee has carefully assessed the orders which were given to the telecommunications carriers which may or may not have participated in the Terrorist Surveillance Program. And they were based, yes, they were based largely on article II.

The FISC has already indicated nothing Congress can do can extinguish the President's authority under article II, but Congress also passed the authorization for use of military force, which was a counterbalance in the weighing of the constitutional arguments of article II with the provisions of the FISA law.

I have reviewed the Attorney General's findings, the Department of Justice findings. I have read the authorizations and the directives. It is clear to me, and clear to others, most of the others who have reviewed it, they were clearly acting under the color of law.

I happen to think they were right. You can make an argument that maybe they were not right. But the carriers that may have participated were not in a position to challenge those. They got a lawful order from the head of the intelligence community, based on authorization from the President, in a manner cleared by the Department of Justice. Under those circumstances, I believe it would not only have been unpatriotic, but it would have been willful for the carriers to refuse to participate. Yet they are being sued.

I think the suits are designed to cripple our intelligence community. There are not going to be significant judgments awarded no matter what they say because anybody who was intercepted would have to come in to court and say they were intercepted and prove harm. I really question whether they can do that. But under the substitution argument, the disaster to our intelligence operations is clear, as is the damage to the reputation and the business of any carriers which may have participated.

Back in 2006, right after the disclosure of this and the terrorist finance tracking measure, when the newspapers carried it, television carried it, terrorist leaders—very bright people—abroad learned of it, communicated about it on their own communications, and those communications, I was told in the field, went down significantly.

So I asked General Hayden, at his confirmation hearing to be head of CIA, how badly these disclosures hurt us. And he said at the time that we are applying the Darwinian theory to terrorists; we are only capturing dummies. The more we disclose about the workings of our intelligence intercept capabilities, the more those whom we would target know how to avoid them. And they are taking steps; they know too much about it. Any further disclosures would further complicate and damage the collection capabilities of our intelligence community.

Moreover, the damage to the reputation of the carriers would be significant. The damage would occur likely in exposing the carriers—their employees and their facilities—to terrorist activities or vigilante activities. It would destroy their business reputation, cause untold harm in the United States, and probably effectively curtail their ability to operate overseas. If they are put out of operation or if they are limited in their operations, then the intelligence community loses a substantial means of acquiring the intelligence we need.

So when this bill comes up—I expect it will come up, but I believe it must come up under a 60-vote rule or we are going to go through the normal process of getting to 60 votes, and we will never get anywhere. I think both sides of the aisle should recognize that. I will be happy to make these arguments.

I know my colleague from Rhode Island is a very skilled lawyer, a very effective debater. He will present his arguments, I will present my arguments, and there will be others who will join with us. So while I would love to get on with the debate and votes, we are not going to go there until we resolve the question of whether there is a 60-vote margin.

So I thank the Chair, and I thank my colleague from Rhode Island.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. WHITEHOUSE. Madam President, I appreciate very much the arguments made by the very distinguished Senator from Missouri, who is also the vice chairman of the Intelligence Committee and possesses great experience in this area. My point, though, is that all these arguments are for naught if the simple courtesy of a Senator being allowed to vote on his amendment is not honored.

This particular amendment being nongermane postcloture means it may very well be squeezed out by the procedural devices the Republican leader has applied. So my simple question is, if I may ask it through the Chair to the distinguished Senator from Missouri, the Republican manager of this bill, can we assure Senator SPECTER and myself that this amendment will, at the appropriate time in this legislation, receive a vote?

Mr. BOND. Madam President, I am happy to respond as soon as we go back to the normal means of proceeding on FISA matters, establishing a 60-vote threshold, which is the standard I had to meet to bring the Protect America Act to the floor. I would certainly expect that his amendment would be brought up, fully discussed, and debated. This is one of the major issues we have to decide. But we have to decide it on a 60-vote point of order.

MORNING BUSINESS

Mr. BOND. Madam President, I ask unanimous consent that the Senate proceed to a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

The Senator from North Dakota.

FISA

Mr. DORGAN. Madam President, we are talking about FISA we use a lot of acronyms in Washington, DC, unfortunately—the Foreign Intelligence Surveillance Act. It is a complicated subject, and one, if people have been watching the debate, that is also controversial. There is a lot of passion about this subject. We have people standing up and saying: None of this should be disclosed. We should not be talking about this. This is about the ability to protect our country against terrorists. Of course, we have to listen into communications and intercept communications. It is the only way to find out if there are terrorist acts being plotted by terrorist groups, and so on. There is that kind of thing.

There are concerns on the other side by people who say: Wait a second.

There is something called a Constitution in this country. There is a right to privacy, a right to expect that the Government will not be spying on American citizens without cause.

This is a very controversial and difficult subject. Frankly, nearly everyone, with the possible exception of the chairman and ranking member or maybe one or two others on the Intelligence Committee, knows very little about that which we are discussing.

Let me put up a photograph of a door. This is a door in San Francisco, CA, a rather unremarkable photograph of a door. This is a door that is in AT&T's central offices in San Francisco. A courageous employee of AT&T named Mark Klein, who had been with the company for 22 years, blew the whistle on what was happening behind this door. According to Mark Klein, the National Security Agency had connected fiber optic cables to AT&T's circuits through which the National Security Agency could essentially monitor all of the data crossing the Internet. Here is what Mr. KLEIN had to say went on behind this door:

> It appears the [National Security Agency] is capable of conducting what amounts to vacuum-cleaner surveillance of all the data crossing the Internet—whether that be people's e-mail, web surfing, or any other data.

The description of what was happening at this one telephone company in this one location in San Francisco was this: the intercepting of communications at the AT&T Folsom Street facility, millions, perhaps billions of communications from ordinary Americans coming into and through the facility, which would normally have been the case for a telephone company, and a splitter being used, according to the discussion by Mark Klein, splitting off all of this conversation into an NSA-controlled room, to be eventually evaluated with sophisticated programming, and then going back out in order to complete the communication. So you have effectively a copy of everything that is happening going through with a splitter to a secret room.

When this became public, when a whistleblower working for the company said, here is what is happening, there was an unbelievable outcry on both sides. Some people said: What on Earth is happening? We have secret rooms in which the National Security Agency is running all this data and all this information through and spying on American citizens? Others said: What is going on? Who on Earth would have decided they should disclose this publicly? They are going to alert the terrorists to what we are doing. We had both sides aghast that this was disclosed. It is important to say that, initially, almost no one in an official capacity was willing to admit to this. Finally, it was admitted, yes, there was a program. The President said: Yes, there is a program—speaking, apparently, of just this program; we don't know of other programs that exist or may exist, but this program existed without our knowledge. The President indicated this program existed because we are going after the bad guys, and we have a right to do that. And we did this program because the process that had been set up because of abuses with respect to eavesdropping and spying on American citizens decades ago, that process was way too cumbersome, took far too much time, and we needed to streamline that. That is a paraphrase. But there was an admission that this program existed and no additional legal authority needed to empower the President to do it.

So that is where we are. Most of us don't know the full extent of this program at all. In fact, my understanding is that rooms like this exist in other parts of the country with other telephone companies where splitters are used to move data to separate rooms and data is evaluated.

This whole process comes from several decades ago when something called the FISA Court was set up, a court to evaluate the questions about when it is legal and appropriate and when the Government is able to intercept communications. The FISA Court was established for the very purpose of trying to make the judgment about when it is appropriate to go after the bad guys and how to protect our civil liberties at the same time.

The FISA Court was an outgrowth of concern by the Congress when we discovered that there was a time in this country when we had the National Security Agency running secret projects called Shamrock and Minaret to gather both international communications and also domestic communications. Project Shamrock actually started during the Second World War when major communications companies of the day gave the Federal Government access to all of their international traffic. One can imagine, in the fight against the Nazis and the Japanese Imperial Army, the desire for international communications to evaluate things that might threaten this country's security. But the Shamrock program then, as we know, changed over time.

At first the goal was to intercept international telegrams relating to foreign targets. Then, soon the Government began to intercept telegrams of U.S. citizens. By the time there were hearings held in the Congress, the National Security Agency was intercepting and analyzing about 150,000 messages per month.

Data from Project Shamrock was then used for another project code named Project Minaret, which we now know spied on perceived political opponents of the then-administration of Richard Nixon. Under this program the NSA added Vietnam war protesters to its watch list. After there was a march on the Pentagon, the Army requested that they add antiwar protesters. The list included people such as folk singer Joan Baez and civil rights leader Dr. Martin Luther King, Jr. We just celebrated within the week the Federal holiday celebrating the birthday of Martin Luther King, Jr. Yet it was not too many decades ago that Dr. Martin Luther King, Jr., was under surveillance by his own Government.

The Congress passed its findings, when it did investigative hearings, and the Foreign Intelligence Surveillance Act created the FISA Court.

Here is the experience with the FISA Courts. Between 1975 and 2006, there were 2,990 warrants issued by the FISA Court. Only five were denied. What that suggests is that it is not too difficult to get approval by the FISA Court for surveillance. But the President and Mr. MCCONNELL, the head of our intelligence agency, have indicated that there has been a problem.

For example, Mr. MCCONNELL cited the capture of three American soldiers who were later killed in Iraq. Right after they were captured there was a period of time when it was critically important to be able to intercept communications in Iraq, and they were encumbered at a time when it was critical to find out who held these soldiers.

That is not accurate, and the head of intelligence would have known that. I don't know why he represented that. There is a period of time when in an emergency situation, you can begin surveillance without having to go to FISA. You have to go FISA after that period of time, but you are given an opportunity for emergency surveillance even before you get the approval or even before you go to the FISA Court.

What we have learned, however, through all of this process is from a December 2005 report in the newspapers. President Bush had authorized the National Security Agency to eavesdrop without warrants inside the United States which bypassed the entire FISA Court system. It turns out that most of the large telephone companies in this country had gone along with the administration's request for that activity.

We are told that the administration, Attorney General Gonzales, and others furnished the telephone companies with some sort of letter, a certification of sorts. We don't know what that letter was, however, because the administration, citing the State Secrets Act, refuses to allow that to be disclosed.

I think if they provide certification to a telephone company—and the telephone company relies on that—by officers of the Federal Government, in good faith, let's have that disclosed. Why should we wonder about the actions of a telephone company? If, in fact, you have an Attorney General of the United States who is certifying, let's find out what this administration did. Let's find out how they did it. Let's not have them tell us you cannot even see what was provided to a telephone company in terms of certification. That, in my judgment, does not pass the red face test.

I hope very much we will begin to learn at some point what this administration has done, when they did it, and

what the consequences of it are. This issue of the Foreign Intelligence Surveillance Act has become a political football by this administration. The last time we debated this, some while ago, it was quite clear that the politics of it were viewed as wonderful politics by the other side and by the White House. But this ought not be about politics at all. This ought to be about two issues, both of which are critically important: One is protecting this country's interests, yes, giving us a chance to make sure we understand what the terrorists are doing, how to foil terrorist attempts to injure this country—it is about that; and that is very important—but it is also about civil liberties and protecting the rights of the American people at the same time.

We thought we had done that by putting together the FISA Court. We thought we had done that by establishing a procedure that needed to be followed. We now understand the President, with his lawyers, says those laws do not matter. There is in the Constitution, they say, something about the powers of the Commander in Chief, and he can do whatever he wants. That is a pretty dangerous interpretation of the U.S. Constitution.

We debate this in so much ignorance because almost no one knows what this administration has done, and they are preventing us from knowing as much as we should know, in most cases, by claiming protection under the State Secrets Act, and not even allowing the release of the letter that was provided to the telephone companies that cooperated that describes to them the legal authority for doing so.

I think there is much to be learned here, much we need to know. I think it is very important, as we reach an agreement on the Foreign Intelligence Surveillance Act—and we should because it is an important circumstance by which we need, in certain cases, when we believe there is information being passed from terrorist to terrorist, and so on—if those communications are being run through this country, we need to be able to intercept and interpret what is happening—but it is critically important we not allow a kind of an approach to this where there is no oversight, there is no check.

We have a government of checks and balances. What the President and his people seem to be saying to us is: We are not interested in checks and balances. We have the authority in the Constitution, as we interpret it, and that means it exceeds every law you can pass. We are going to do what we want to do. And if you don't like it, tough luck. And if you don't like it, by the way, what we will say to the American people is you are not willing to stand up for the security of this country.

It is outrageous. It is dragging this issue smack-dab in the middle of their little political balloon. But this is a much more important process than that. We need to do this, and we need to get it right in order to protect America. We need to do this, and we need to get it right in order to protect the interests of the American people as well—and that interest of privacy and that interest of making sure that ''big brother government'' is not running all of your telephone calls and all of your e-mails and all of your information through its drift net to find out what you are saying and what you are doing and who you are talking to.

That is not what I understand to be the best interests of this country or the guarantees that exist in the Constitution for the American people. That is why this is worth an important controversy and an important fight. It is why it is for us to take enough time to get it right. This is a big issue. We do a lot of things on the floor of the Senate that are not so big—not big issues. They are smaller issues in consequence. This issue is about freedom and liberty and the guarantees given the American people in the Constitution. It is about whether there is a check on Presidential power that assumes they have the power that exceeds all other laws. If we do not have that kind of check and balance in this Government, then we have bigger problems than I thought.

So I only wanted to say, with respect to this issue, we do not know much about it. We know at this point that behind this door, as shown on this chart—behind this door—exists information split off what is called a splitter from the main line. Massive amounts of information come into it—in this case, it was AT&T; it could have been other telephone companies—it is split off, and then all of it is evaluated to find out: Is there something there that is suspicious? It is not the way America has ever worked, and not the way it should work.

So the more we know, I think the more we will be able to better understand how to do two things at once: protect our country against terrorists, and protect the civil liberties of the American people. Both are important. At least there is one group of people in this political system of ours that believes the first is far more important than the second. They are wrong. They are both important, and both worth standing up for.

STIMULUS PACKAGE

Mr. DORGAN. Madam President, I want to talk for a few moments about the so-called stimulus package we are assembling to help our economy. What I want to say, first of all, is we have an economy that is a remarkable engine. This little spot on the planet—the United States of America—is quite an unbelievable economic engine. It has provided bounties and benefits to a group of people that exceed that provided to almost anybody else on this planet.

But we have run into some real problems. We now find ourselves in the year 2008 where we have a stock market that is wildly gyrating up and down. We see these dramatic swings in the stock market. That is a reflection of a substantial amount of concern and nervousness about what is happening in the economy and where we are heading.

In the last several decades we have morphed into a global economy. I have never questioned that. I have always questioned why the rules have not kept up. But the global economy is a different kind of economy for us. We are now told by those who wanted to create their own set of rules that the American people should compete with folks who work in Shenzhen, China, for 20 and 30 cents an hour making bicycles and little red wagons. There is downward pressure on income in this country. There is great concern by the American people about the loss of jobs and the loss of benefits. So there is a lot happening that is of great concern.

In addition to these dramatic yo-yo swings in the stock market that reflect widespread concern about the economy—we have at the same time some real fundamental structural problems in the economy. Because it appears the economy is now weak, we have more people unemployed. We have fewer housing starts. We have a whole range of issues that demonstrate a serious economic problem: a slowdown certainly, a recession very likely. Because of that, we are told there needs to be some short-term stimulus to provide a spark to help crank up this economy again.

Well, we always talk about that in an economic slowdown. We have put economic stabilizers in place over a long period of time—two to three to four decades—that have been very helpful in moderating the recessions we have had. Normally speaking, the recessions we have had have been shallower recessions because of economic stabilizers that have been put in place. But that does not mean you will not ever have recessions.

We might be in a recession now. So the Federal Reserve Board decided, earlier this week, cuts interest rates by 75 basis points. That was a big, bold, dramatic move by the Fed. These people wear gray suits and do not do anything very boldly, but this week they decided: Man, we are going to do something bold—so three-quarters of a percent interest rate cut.

It is expected, then, in monetary policy—having been moved by the Fed earlier this week—in fiscal policy our responsibility in Congress is to do something as well. So we in the Congress are putting together a fiscal policy approach. That approach is a stimulus package.

Well, the stimulus package would typically be some sort of tax rebate to people, perhaps some investment tax incentives to stimulate capital acquisition by businesses.

The House and the White House have moved now to agree on something that