eliminate or at least delay any of the additional protections against reverse targeting, providing court review, and preventing reverse targeting of U.S. persons?

Mr. CHAMBLISS. Again, Mr. President, I respond to the vice chairman that reverse targeting is not prohibited under the Protect America Act. It is a procedure that some allege could occur under the Protect America Act, but which is clearly prohibited under this act.

Anybody who is concerned about extending and protecting the rights of individuals ought to be a lot more concerned about getting this bill enacted into law than they should be about extending the Protect America Act. So this is one of those situations where it is totally unexplainable to me for someone to say: I don't think we ought to pass this law because it doesn't go far enough, when it goes further than current law and the Protect America Act which we already have voted for. Now there is an attempt being made to extend the Protect America Act for an additional period of time.

Mr. BOND. Mr. President, I ask my colleague why it has taken so long to get us to this point when the Protect America Act expires on February 1?

Mr. CHAMBLISS. As the Senator has said on the floor over the last several days, we are ready to pass this bill tonight if our friends on the other side of the aisle will simply get together with us and let us vote it up or down.

When it comes to the issue of 60 votes, I have only been in this body for 5 years, but I cannot think of one single major piece of legislation that I have seen on the floor of the Senate during those 5 years that didn't require 60 votes for all major amendments. I was the manager of the farm bill recently. That is a long way away from this sophisticated piece of legislation, but every major amendment we had required 60 votes. That was the most recent, large piece of legislation we have had on the floor. So every time we have a major bill, a 60-vote requirement is reasonable and is going to be called for. I think for us not to have it in this particular situation would be extremely unusual.

Mr. BOND. Mr. President, I might ask, isn't there a danger that if there is an amendment not subject to the 60-vote point of order, it is possible, with various Senators absent, that we could adopt, perhaps, on a 47-to-46 vote, an amendment that would make it impossible for the intelligence collection required by the intelligence community to go forward, and if such were adopted, what would happen to the legislation?

Mr. CHAMBLISS. Mr. President, if I may respond, the Senator is exactly right. If we did not have a 60-vote requirement on amendments, or dealing with any issue in this bill, then it is possible that we could adopt amendments, by less than a majority of the Members of the Senate, which could hamper our intelligence community. And on this critical, sensitive, most important piece of legislation, for us to pass an amendment without a 60-vote requirement really makes no sense at all.

I think all of us would certainly be remiss and derelict in our duties if we didn't insist on a 60-vote requirement.

Mr. DURBIN. Will the Senator yield for a question?

Mr. BOND. Of course.

Mr. DURBIN. Mr. President, is the Senator proposing to change the Senate rules that all amendments will now take 60 votes? Is that the proposal before the Senate?

Mr. BOND. Mr. President, if I may respond, as my friend from Georgia pointed out, in order to pass very important legislation such as this, it has been the practice in this body to require 60 votes, and as my colleague from Georgia just said, the farm bill passed with 60 votes on the amendments. When we passed the Protect America Act, we had to get 60 votes.

This bill could be enacted into law and will undoubtedly have to have 60 votes to be signed by the President. I say to my distinguished colleague from Illinois, if there are changes made with less than a 60-vote margin, if they destroy the ability of the intelligence community to operate the collection system as we have prescribed, then that bill will never be signed into law. We would have to start all over again, and we would thus be leaving our intelligence community without the tools to protect us.

We are not saying we are changing the rules of procedure. We are following the practice that has been adopted in this Senate.

Mr. DURBIN. If the Senator will further yield, I am new here; I have only been here 11 years. So I am trying to learn a little about how this works. I recall that somehow the Republic survived and the Nation did well, we kept our armies in the field and built our highways and passed our bills, and we did that for a long period of time without requiring 60 votes on every amendment. Then there came this age of the filibuster, where the Republican minority last year had 62 filibusters, breaking a record in the Senate. Well, to stop the filibuster, you need 60 votes.

So now I assume what the Senator is suggesting is that we are in a new age in the Senate, and it is going to take 60 votes for everything. If that is the proposal, I suggest a rules change. Let's get on with it and find out if there are enough votes here to make that the rule. If it is going to be the age of filibusters again this year, the public won't like it much. We were in the minority not that long ago.

But if that is your goal, if you want to make this a 60-vote requirement, it is a different Senate, and it will be, unfortunately, adding to the frustration many people have when they look at Washington and say: Why don't you pass something, or why don't you do something about health care or about other issues? We will have to tell them we don't have 60 votes.

Mr. BOND. Mr. President, if that was a question—and I assume it was a question—let me say that requiring 60 votes is something which has occurred frequently in previous years, when this side had the majority and the other side was in the minority. We found that it was very difficult to pass legislation without 60 votes. Thus, we have seen that practice before.

But this is not an ordinary piece of legislation. Had we dealt with this in a timely fashion, this could have been handled on a different basis. But the Director of National Intelligence, whom I will refer to as the DNI, submitted to the Intelligence Committee, in April, a measure that he felt was necessary to modernize FISA. That bill was not brought up. The DNI testified in person before the committee in open hearing in May. Despite my request, no legislation was developed in the committee. The DNI came before the Senate in closed session, in a confidential room, in July of this year, to say how important it was. No bill came out of the Intelligence Committee. So the DNI proposed a short-term fix, which I brought to the floor on his behalf at the end of July, the first of August, and we were able to pass the bill, but we had to pass on a 60-vote basis.

When there are very important pieces of legislation, with strong feelings on both sides—as my colleague from Georgia has pointed out, he handled a very important and difficult farm bill—those measures had to have 60 votes.

Now, the fact is, we could have a bunch of simple majority votes, and there are many we can take on a simple majority. But if there are amendments which, if adopted, would prevent the bill from being passed and signed into law, as a practical matter, it makes sense to have a 60-vote margin.

We are waiting for a response to the offers we have made to the other side because, frankly, February 1 is coming. I hope we will agree on it. I understand the House is sending us a 15-day extension. I say to my friend from Illinois that I hope we can adopt the 15-day extension and a collaborative agreement between the two sides on how we are going to proceed to finish this bill.

I see the distinguished assistant majority leader has some information. I am happy to yield to him for that.

EXTENSION OF MORNING BUSINESS

Mr. DURBIN. Mr. President, I ask unanimous consent that the period for morning business be extended until 6:30 p.m., with the time equally divided.

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

ORDER OF BUSINESS

Mr. DURBIN. Mr. President, I announce to the membership that there

will be no further rollcall votes during today's session.

Mr. BOND. Mr. President, I thank the assistant majority leader for advising us that we won't have to continue the frenetic pace of voting this evening. I look forward to working with him. He is a pleasure to work with. Maybe tomorrow we will be able to go forward.

I was going to offer some thoughts on the intent of FISA, but I will defer to my colleague from Georgia if he has further points he wishes to raise.

Mr. CHAMBLISS. Mr. President, I am happy to yield to the vice chairman if he has prepared comments he intends to make. If I have something to supplement that, I will do so.

FISA

Mr. BOND. Mr. President, I thank my colleague from Georgia. I thought maybe, if anybody is still listening, we would talk a little bit about the intent of the Foreign Intelligence Surveillance Act. I hope maybe we can clarify some of the misunderstandings.

First, I believe that when the distinguished Senator from California, a valued member of the committee, Mrs. FEINSTEIN, spoke on the origins of FISA, she correctly noted that it was created, at least in part, in response to the disclosed abuses of domestic national security surveillance. However, as the legislative history makes clear, FISA was never intended to regulate the acquisition of the contents of international or foreign communications where the contents are acquired by intentionally targeting a particular known U.S. person who is in the United States.

The legislative history states:

> This bill does not afford protections to U.S. persons who are abroad, nor does it regulate the acquisition of the contents of international communications of U.S. persons who are in the United States, where the contents are acquired unintentionally. The Committee does not believe this bill is the appropriate vehicle for addressing this area. The standards and procedures for overseas surveillance may have to be different than those provided in this bill for electronic surveillance within the United States, or targeted against U.S. persons who are in the United States.

In essence, then, FISA, as originally drafted, was a domestic foreign intelligence surveillance act. Congress was concerned about targeting persons inside the United States with interceptions conducted inside the United States.

The FISA Act amendments legislation we are considering today is a very different animal, and it could be better characterized as an international foreign intelligence surveillance act. The bill is concerned mainly with targeting persons outside the United States when interception might occur inside the United States. What do I mean by that? The legislation will regulate how the President may conduct electronic surveillance of foreign terrorists operating in foreign countries when their communications just happen to pass through the United States on wire communications networks.

This strange interference with the intelligence community's and, indeed, the President's authority to conduct foreign intelligence activities appears to arise from an overabundant concern about the ''rights'' of persons in the United States whose communications are incidentally collected when they talk to terrorists overseas.

It is odd that we are creating a new law in this area that departs from the original construct of FISA because in the international surveillance realm, there have been no significant abuses of the intelligence community's ability to collect overseas foreign intelligence.

Unfortunately, two factors have compelled us to make these changes to FISA. First, we need to ensure that the critical intelligence gaps identified by the DNI last year do not reappear.

The Protect America Act effectively closed those gaps last summer, but there was bipartisan agreement that we could improve on its provisions, especially in the area of carrier liability protection, and that is what our committee did.

Second, this legislation is also required because we must address the practical reality that electronic communications service providers are now insisting on a formal process to compel cooperation in the foreign arena in order to obtain prospective liability protection similar to that enjoyed for domestic intelligence and criminal wiretaps. That is why the carrier liability protection and prospective liability protection provisions of this bill are so important.

Another area where we are departing from the original intent of FISA is the targeting of U.S. persons abroad. FISA, as passed in 1978, left the targeting of American citizens abroad to the President's Executive order applicable to the intelligence community and the procedures approved by the Attorney General. In this legislation for the first time in history, we build into the FISA new laws that govern the targeting of U.S. persons overseas who are agents, officers or employees of foreign powers when a significant purpose of the acquisition is to obtain foreign intelligence information.

These new procedures are sometimes referred to as 2.5 procedures because they are based in part upon section 2.5 of Executive Order 12333, which has long governed the electronic surveillance of U.S. persons overseas by requiring the approval of the Attorney General based upon a finding of probable cause that the target is a foreign power or agent of a foreign power.

These 2.5 changes were part of the overall bipartisan compromise and now require prior court review by the Foreign Intelligence Surveillance Court of all surveillance conducted by the U.S. Government targeting U.S. persons overseas. Americans will still be on their own with respect to being surveilled by foreign governments overseas, but at least they can remain confident that if they are not working for a foreign power as a spy or terrorist, their own Government will not be listening to their conversations.

The last area that merits discussion on the issue of FISA's original intent is the Foreign Intelligence Surveillance Court. We refer to it as the FISC. According to section 103 of FISA, the FISC was established as a special court with nationwide jurisdiction to ''hear applications for and grant orders approving electronic surveillance anywhere within the United States.'' That is it.

As evidenced by the application and order requirements in FISA, each application is for a ''specific target'' for the significant purpose of obtaining foreign intelligence information.

The court was originally structured so its seven judges would provide geographical diversity. The post-9/11 expansion of the FISC from 7 to 11 judges enhanced that diversity. Judges are nominated by the chief judge of their circuit to promote ideological balance on the FISC.

It was clearly recognized that only one or two judges would be in Washington, DC, on a rotating basis at any given time. This was intended to discourage judge shopping and make it unlikely that an application for the extension of an order would be heard by the same judge who granted the original order.

The FISC was never envisioned as a court that would or should handle protracted litigation. It possesses neither the staff nor the facilities to preside over such litigation. Moreover, it is very likely that such prolonged litigation would interfere with the main business of the FISC, which is to ensure the timely review and approval of individual operational FISA applications for court orders.

We need to remember that the FISC was set up to review domestic electronic surveillance and later physical searches, an area that has numerous parallels to the similar reviews conducted by district court judges when they are asked to authorize criminal wiretaps. As I mentioned previously, even the FISC has acknowledged its lack of expertise in the foreign-targeting context, which is, they say, better left to the executive branch.

The Court's recent opinion in the case of In re: Motion for Release of Court Records stated:

> . . . even if a typical FISA judge had 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 the national security.

We should be very hesitant to disregard the Court's own assessment of its competency in the overseas intelligence realm, especially given the original intent of FISA. I urge all my colleagues to be mindful of the Court's own words as we consider some of the