to the families and friends of those who were lost and injured;

(4) extends its thanks to the first responders, firefighters, and law enforcement, and medical personnel who took quick action to provide aid and comfort to the victims; and

(5) stands with the people of Nebraska and Iowa as they begin the healing process following this terrible event.

HONORING MEMBERS OF THE U.S. AIR FORCE

Mr. DODD. Mr. President, I ask unanimous consent that the Armed Services Committee be discharged from further consideration and the Senate now proceed to H. Con. Res. 32.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the House concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 32) honoring the members of the U.S. Air Force who were killed in the June 25, 1996, terrorist bombing of the Khobar Towers United States military housing compound near Dhahran, Saudi Arabia.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. DODD. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, the preamble be agreed to, and the motions to reconsider be laid upon the table.

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

The concurrent resolution (H. Con. Res. 32) was agreed to.

The preamble was agreed to.

AMERICAN HOUSING RESCUE AND FORECLOSURE PREVENTION ACT OF 2008—Continued

Mr. DODD. Mr. President, I ask unanimous consent that the Senate resume consideration of the House message to accompany H.R. 3221, the Housing reform legislation.

The PRESIDING OFFICER (Mr. SALAZAR). Without objection, it is so ordered.

Mr. DODD. Mr. President, as the chairman of the Senate Banking Committee, I express my gratitude to all the Members of this body. We began proceedings on the motion to invoke cloture earlier today, which passed by a vote of 83 to 9, another overwhelming vote in support of moving to the housing bill.

Regretfully, we were not able to deal with many amendments today because there was at least one objection to proceeding to the matter, pending the outcome of an extraneous matter that had little, if anything, to do with housing, regretfully—despite the strong bipartisan vote this morning—once again demonstrating that in this body one Senator can disrupt the efforts to achieve a larger result. Certainly, that is the Senator's right, and nothing was done illegally or unlawfully. It just dramatizes the difficulty in achieving even something as important as the housing legislation we are working on.

I would be remiss if I didn't observe that the Senator from Ohio, the occupant of the chair, is a worthwhile member of that committee. I am grateful to him and the other members of the committee for their work over the last year and a half since the majority began that work. We have had some 50 hearings on that committee. We adopted some 17 or 18 pieces of legislation out of the committee—maybe more—more than half of which have become the law of the land. A number of others, of course, have passed the Senate, or passed on out of committee, and we have not been able to resolve all of them.

No matter is as significant and as important as the housing reform legislation—to stop the hemorrhaging that is occurring, with more than 8,400 people a day filing for foreclosure in our country. People find those numbers alarming, and it is intended to be so, because it is large. Our efforts here are to try to keep people in their homes, and finding a floor, if we can, to this housing problem that continues to cascade downward will be a challenge for all of us.

Our legislation takes a major step in the direction of dealing with that, along with the reform of the government-sponsored enterprises and, of course, the permanent affordable housing program, not to mention the efforts we have made in community development block grants, counseling services, mortgage revenue bonds, and tax relief for those who wish to acquire a foreclosed property—all part of a larger piece of legislation to deal with the housing crisis. I am hopeful and confident we will get to it. It will take a little bit longer as a result of the objections some are raising.

This evening I rise to talk about another matter, which will be the subject of a debate, whether it is in the next few days or weeks. It is a subject matter which I care deeply and passionately about. It involves the rule of law, the Constitution of the United States, and the very basic principle that we are a nation of laws, not men; that even those in the most lofty of positions in our Government are not above the law; that individuals, corporations, and companies have an obligation to respect that law, and those of us charged with guarding it in an institution such as the Senate have an obligation to defend it and to remind ourselves and the country when there are efforts to undermine that rule of law.

As I did in December of last year, when the matter first came up, and again in February, when the effort came back to the Senate to change the Foreign Intelligence Surveillance Act, and particularly to grant retroactive immunity to a handful of telecom companies, which, over the past number of years, have gathered up information and private information of individual citizens in this country, which may have been the single largest breach or personal invasion in the history of our country, the issue of whether that was done legally ought to be determined by the courts of our country.

The bill that will come before us grants retroactive immunity without ever considering what happened, how it happened, who was responsible, why it was done, and why was no effort made to go before the Foreign Intelligence Surveillance Courts—the FISA courts—which have been in existence since the 1970s. All of those are important questions the American people deserve an answer to. Was the rule of law violated? Were there individuals who insisted that this invasion of privacy occur in this country? I don't think it is asking too much to want to get to the bottom of that. Americans, regardless of ideology or party persuasion, ought to be jointly offended when there is an effort here to grant retroactive immunity without determining what happened and why these events were allowed to go forward.

This evening I am going to take the time allowed to me under the rules of the Senate because we are in a postcloture environment. I am limited to the amount of time I am permitted to talk under the rules of the Senate. But I can do this because of the generosity of Senator JACK REED of Rhode Island, Senator MAX BAUCUS of Montana, and the willingness of the majority leader, to give me the maximum time allowed to talk about this FISA bill, the Foreign Intelligence Surveillance Act. I will speak about why I am so deeply concerned about it, and what I think the precedent-setting nature of this could mean for our country.

There are moments such as this when we are asked to do something because, we are told, if we don't, we will jeopardize our Nation. During such times, we have historically made some of the worst mistakes in our history. One only needs to go back to the period of World War II when, because of the fears people had, we incarcerated a lot of very good Americans of Japanese descent, because those who engaged in the fear mongering were able to convince even the Supreme Court of the United States—a majority—to allow for the virtual incarceration of literally thousands of human beings. We know now, today, what a great mistake that was, and how courageous it was that people like Robert Jackson, a Supreme Court Justice, a former Attorney General under Franklin Roosevelt, a solicitor general, chief prosecutor at Nuremberg, one of the sole voices on the Court who objected to that effort to require these American citizens to be deprived of their homes, personal belongings, and the virtual incarceration in camps in the western part of the country. Today, we know what a mistake that was. But because we acted out of fear, we made a dreadful error.

My concern about this FISA bill, while not of that magnitude at this

point, is that we are about to make another great error because of fear, because we fail to understand that balancing legitimate interests of our security and our rights ought not to be compromised. That is what the FISA courts were created to do—to balance rights and fears over legitimate concerns about our security being jeopardized.

So I rise once again to voice my strong opposition to the misguided FISA legislation before us, as it will come in the next day or so. I have strong reservations about the so-called improvements made to title I of the legislation. But more than that, this legislation includes provisions that would grant retroactive immunity to telecommunications companies that apparently have violated the privacy and the trust of millions of our fellow citizens by participating in the President's warrantless wiretapping program. If we pass this legislation, the Senate will ratify a domestic spying regime that has already concentrated far too much unaccountable power in the President's hands and will place the telecommunications companies above the law.

I am here this evening to implore my colleagues to vote against cloture when that vote occurs, as it will sometime in the next 24 to 48 hours.

Let me make it clear at the outset of the debate that this is not about domestic surveillance itself. We all recognize, here and elsewhere, the importance of domestic surveillance in an age of unprecedented threats. This is about illegal, unwarranted, unchecked domestic surveillance. The difference between surveillance that is lawful, warranted, and that which is not, is everything.

I had hoped I would not have to return to this floor again under these circumstances. I hoped, in truth, that in these negotiations that went on over the past number of weeks and months we would have been able to turn aside retroactive immunity on the grounds that it is bad policy and sets a terrible precedent.

As all of my colleagues know, I have long fought against retroactive immunity, because I believe it is simply an abandonment of the rule of law. I have fought this with everything I have in me, and I have not waged this fight alone.

In December, I opposed retroactive immunity on the floor of this body. I spent 10 hours on this floor then. In January and February, I came to the floor time and time again to discuss the dangers of granting retroactive immunity, along with my colleague and friend, RUSS FEINGOLD of Wisconsin, who has shown remarkable leadership on this issue. I offered an amendment that would have stripped retroactive immunity from the Senate bill. Unfortunately, our amendment failed and, to my extreme disappointment, the Senate adopted the underlying bill.

Since passage of the Senate bill, there have been extensive negotiations on how to move forward. Today we are being asked to pass the so-called compromise that was reached by some of our colleagues and approved by the other body, the House of Representatives.

I am here this evening to say I will not and can not support this legislation. This legislation goes against everything I have stood for—everything this body ought to stand for, in my view.

There is no question some improvements have been made over the previous versions of this legislation. Title I, which regulates the ability of Government to conduct electronic surveillance, has been improved, albeit modestly. I congratulate those who were involved with it. I say, very quickly, that it is my hope a new Congress and a new President will work together to fix the problems with title I should the Senate adopt this new legislation.

But in no way is this compromise acceptable. This legislation before us purports to give the courts more of a role in determining the legality of the telecommunications companies' actions. But in my view the title II provisions do little more than ensure without a doubt that the telecommunications companies will be granted retroactive immunity.

Allow me to quote the Senate Intelligence Committee report on this matter. It reads as follows:

> [B]eginning soon after September 11, 2001, the Executive branch provided written requests or directives to U.S. electronic communications service providers to obtain their assistance with communications intelligence activities that had been authorized by the President.
>
> . . . The letters were provided to electronic communication service providers at regular intervals. All of the letters stated that the activities had been authorized by the President. All of the letters also stated that the activities had been determined to be lawful by the Attorney General [of the United States], except for one letter that covered a period of less than 60 days. That letter, which like all the others, stated that the activities had been authorized by the President, stated that the activities had been determined to be lawful by the Counsel to the President.

This is all from the Intelligence Committee report.

Under the legislation before us, the district court would simply decide whether the telecommunication companies received documentation stating the President authorized the program and that there had been some sort of determination it was legal. But as the Intelligence Committee has already made clear, we already know this happened. We already know the companies received some form of documentation with some sort of legal determination.

But that is not the question. The question is not whether these companies received a document from the White House. The question is, Were their actions legal? Were they above the law or not?

It is a rather straightforward, surprisingly uncomplicated question. The documentation exists. Was it legal or not? Either the companies were presented with a warrant or they were not. Either the companies and the President acted outside the rule of law or they followed it. Either the underlying program was legal or it was not—not a complicated question. Was it legal or wasn't it?

The suggestion that they had documentation is then supposed to be a justification for the legality of it is not for us to decide. That is a matter for the courts, the coequal branch of Government called the judiciary. We are asked to determine that this was legal because documents were sent, not because some adjudication as to whether there had been a legal basis for these documents. Yet we are told that with the adoption of this legislation, accept it as a conclusion and move on. I don't believe we ought to do that. I believe it is a mistake and a mistake of significance.

Because of this legislation, none of the questions will be answered. Because of the so-called compromise, the judge's hands will be tied and the outcome of these cases will be predetermined by our votes. Because of this so-called compromise, retroactive immunity will be granted and, as they say, that will be that. Case closed.

No court will rule on the legality of the telecommunications companies' activities in participating in the President's warrantless wiretapping program. None of our fellow Americans will have their day in court. What they will have is a Government that has sanctioned lawlessness, at least as far as we know.

I refuse to accept that argument. I refuse to accept the argument that because the situation is too delicate, too complicated, this body is simply going to go ahead while sanctioning lawlessness. I think we can do better than that. I think we have an obligation to do better than that.

If I have needed any reminder of that fact, simply look to those who have joined this fight—my colleagues and the many Americans who have given me an awful lot of support and strength for this fight, strength that comes from the passion and eloquence of citizens who don't have to be involved but choose to be involved.

They see what I see in this debate—that by short-circuiting the judicial process, we are sending a dangerous signal to future generations. They see us as establishing a precedent that Congress can and will provide immunity to potential lawbreakers if they are important enough.

Some may be asking: Why is retroactive immunity too dangerous? What is the issue? Why should you care at all? Allow me to explain by providing, if I can, a bit of context. I remind my colleagues what I said about the bill months ago because the argument against providing retroactive immunity remains unchanged. Nothing has changed since last December, January or February.

Unwarranted domestic spying did not happen in a panic or short-term emergency, not for a week, a month or even for a year. If it had, quite candidly, I would not be standing here this evening. I understand, in the wake of 9/11, there were actions taken because of the legitimate fears we had, given the circumstances of that attack, that some actions such as this for a week, a month, a year, I think I would have accepted as normal, understandable behavior as a government overreacting in haste and in the emotions of the moment. But that is not the case. We now know this spying by the administration went on relentlessly for more than 5 years.

I might not be here as well if it had been the first offense of a new administration. Maybe not if it had been the second or third. Again, understanding mistakes can be made. No one is perfect. Again, in the haste of the moment, the emotions, these things can happen. But that is not the case either.

Indeed, I am here tonight because with one offense after another after another, I believe it is long past time to say enough is enough. I am here this evening because of a pattern—a pattern of abuse against civil liberties and the rule of law, against the Constitution of the United States, of which we are custodians, temporary though that status may be.

I would add that had these abuses been committed by a President of my own party, I would have opposed them as strongly as I am this evening. I am here this evening because warrantless wiretapping is merely the latest link in a long chain of abuses.

So why are we here? Because it is alleged that giant telecom corporations worked with our Government to compile Americans' private, domestic communications records into a database of enormous scale and scope.

Secretly, and without warrant, these corporations are alleged to have spied on their own customers, the American people. Here is only one of the most egregious examples, according to the Electronic Frontier Foundation:

> Clear, first-hand whistleblower documentary evidence [states] . . . that for year on end, every e-mail, every text message, every phone call carried over the massive fiber-optic links of 16 separate companies routed through AT&T's Internet hub in San Francisco—hundreds of millions of private, domestic communications—have been . . . copied in their entirety by AT&T and knowingly diverted wholesale by means of multiple ''splitters'' into a secret room controlled exclusively by the NSA.

The phone calls and the Internet traffic of millions of Americans diverted into a secret room controlled by the National Security Agency. That allegation still needs to be proven in a court of law. But it clearly needs to be determined in a court of law and not by a vote in the Senate.

I suppose if you only see cables and computers there, the whole thing seems almost harmless, certainly nothing to get worked up about; one might say a routine security sweep and a routine piece of legislation blessing it.

If that is all you imagine happened in the NSA secret room, I imagine you will vote for immunity. I imagine you would not see much harm in voting to allow the practice to continue either.

But if you see a vast dragnet for millions of Americans' private conversations conducted by a government agency that acted without a warrant, acted without the rule of law, then I believe you recognize what is at stake. You see that what is at stake is the sanctity of the law and the sanctity of our privacy. And you will probably come to a very different conclusion.

Maybe that sounds overdramatic to some. Perhaps they will ask: What does it matter at the end of the day if a few corporations are not sued? These people sue each other all the time.

Others may say: This seems a small issue. Maybe the administration went too far, but this seems like an isolated case.

Indeed, as long as this case seems isolated and technical, then those who are supporting this will win. As long as it appears to be about another lawsuit buried in our legal system and nothing more, then they will win as well. The administration is counting on the American people to see nothing bigger than that—nothing to see here.

But there is plenty to see here, and it is so much more than a few phone calls, a few companies, and a few lawsuits. What is at stake is nothing less than equal justice—justice that makes no exceptions. What is at stake is an open debate on security and liberty and an end to warrantless, groundless spying.

The bill does not say trust the American people, trust the courts and judges and juries to come to a just decision. Retroactive immunity sends a message that is crystal clear: Trust me. And that message comes straight from the mouth of an American President: Trust me.

What is the basis of that trust? Classified documents, we are told, that prove the case for retroactive immunity beyond a shadow of a doubt. But we are not allowed to see them, of course. I have served in this body for 27 years, and I am not allowed to see them. Neither are a majority of my colleagues. We are all left in the dark.

I cannot speak for my colleagues, but I would never take the ''trust me'' for an answer, not even in the best of times, not even from a President on Mount Rushmore. I cannot put it better than this:

> ''Trust me'' government is government that asks that we concentrate our hopes and dreams on one man; that we trust him to do what's best for us. My view of government places trust not in one person or one party, but in those values that transcend persons and parties.

Those words are not spoken by someone who took our national security lightly. They were spoken by Ronald Reagan in 1980. They are every bit as true today. President Reagan's words—let me repeat them:

> ''Trust me'' government is government that asks that we concentrate our hopes and dreams on one man; that we trust him to do what is best for us. My view of government places trust not in one person or one party, but in those values that transcend persons and parties.

Those words of Ronald Reagan, 28 years ago, were right and those words are right today in the year 2008. They are every bit as true today, even if times of threat and fear blur our concept of transcendent values, even if those who would exploit those times urge us to save our skins at any cost.

But again, why should any of us care, I suppose. The rule of law has rarely been in such a fragile state. Rarely has it seemed less compelling. What, after all, does the law give us, anyway? It has no parades, no slogans. It does not live in books or precedents. We are never failed to be reminded the world is a very dangerous place.

Indeed, that is precisely the advantage seized upon, not just by this administration but in all times, by those looking to disregard the rule of law. Listen to the words of James Madison, the father of our Constitution, words that he said more than two centuries ago:

> It is a universal truth that the loss of liberty at home is to be charged to the provisions against danger . . . from abroad.

With the passage of this bill, the words of James Madison will be one step closer to coming true. So it has never been more essential that we lend our voices to the law and speak on its behalf.

What is this about? It is about answering the fundamental question: Do we support the rule of law or the rule of men? To me, this is our defining question as a nation and may be the defining question that confronts every generation, as it has throughout our history.

This is about far more than a few telecoms. It is about contempt for the law, large and small.

I have said that warrantless wiretapping is but the latest link in a long chain of abuses when it comes to the rule of law. This is about the Justice Department turning our Nation's highest law enforcement offices into patronage plums, turning the impartial work of indictments and trials into the pernicious machinations of politics. Contempt for the rule of law once again.

This is about Alberto Gonzales, the Nation's now-departed Attorney General, coming before Congress to give us testimony that was, at best wrong and at worst, outright perjury. Contempt for the rule of law by the Nation's foremost enforcer of the law.

This is about a Congress handing the President the power to designate any individual he wants as an unlawful enemy combatant, hold that individual indefinitely, take away his or her right to habeas corpus, the 700-year-old right to challenge anyone's detention.

If you think the Military Commissions Act struck at the heart of the Constitution, you would be understating this. It did a pretty good job on the Magna Carta while it was at it.

If you think this only threatens a few of us, you should understand that the writ of habeas corpus belongs to all of us. It allows anyone to challenge their detention.

Rolling back habeas corpus endangers us all. Without a day in court, how can you prove you are entitled to a trial? How can you prove you are innocent? In fact, without a day in court, how can you let anyone know you have been detained at all?

Thankfully, and to their great credit, the Supreme Court recently rebuked the President's lawlessness and ruled that detainees do have the right to challenge their detention.

Mr. President, the Military Commissions Act also gave President Bush the power some say he wanted most of all: the power to get information out of suspected terrorists by virtually any means, the power to use evidence gained from torture.

I don't think you could hold the rule of law in any greater contempt than sanctioning torture. Because of decisions made by the highest levels of our Government, America is making itself known to the world, unfortunately, for torture, with stories like this one:

A prisoner at Guantanamo—to take one example out of hundreds—was deprived of sleep for over 55 days, a month and 3 weeks. Some nights, he was doused with water or blasted with air-conditioning. After week after week of this delirious, shivering wakefulness, on the verge of death from hypothermia, doctors strapped him to a chair—doctors, healers who took the Hippocratic Oath to do no harm—pumped him full of three bags of medical saline, brought him back from death, and sent him back to his interrogators.

To the generation coming of age around the world in this decade, that is America—not Normandy, not the Marshall Plan, not Nuremberg, but Guantanamo. Think about it.

We have legal analysts so vaguely defining torture, so willfully blurring the lines during interrogations that we have CIA counterterrorism lawyers saying things like, ''If the detainee dies, you're doing it wrong.'' We have the CIA destroying tapes containing the evidence of harsh interrogations—about the administration covering its tracks in a way more suited to a banana republic than to the home of great freedoms. We have an administration actually defending waterboarding, a technique invented by the Spanish Inquisition, perfected by the Khmer Rouge, and in between originally banned for excessive brutality—listen to this—by the Gestapo.

Still, some way waterboarding is not torture. Oh, really? Listen to the words of Malcolm Nance, a 26-year-old expert in intelligence and counterterrorism, a combat veteran, and former chief of training at the U.S. Navy Survival, Evasion, Resistance and Escape School. While training American soldiers to resist interrogation, he writes:

> I have personally led, witnessed, and supervised waterboarding of hundreds of people. Unless you have been strapped down to the board, have endured the agonizing feeling of water overpowering your gag reflex, and then feel your throat open and allow pint after pint of water to involuntarily fill your lungs, you will not know the meaning of the word. It does not simulate drowning, as the lungs are actually filling with water. The victim is drowning. How much the victim is to drown depends on the desired result and the obstinacy of the subject. Waterboarding is slow motion suffocation. Usually the person goes into hysterics on the board. When done right it is controlled death.

That is from a soldier, a combat veteran, testifying about what waterboarding was about—controlled death. That is not torture? Not according to President Bush's White House. They have said waterboarding is legal and that if it chooses, America will waterboard again.

Surely, then, our new Attorney General would condemn torture. Surely the Nation's highest law enforcement officer in the land, coming after Alberto Gonzales's chaotic tenure, would never come before the Congress and defend the President's power to openly break the law. Well, think again.

When he came to the Senate for his confirmation, Michael Mukasey was asked a simple question, bluntly and plainly: Is waterboarding constitutional? He replied: ''If waterboarding is torture, torture is not constitutional.''

One would hope for a little more insight from someone so famously well versed in national security law, but Mr. Mukasey pressed on with the obstinacy of a witness pleading the fifth: ''If it's torture, if it amounts to torture, it is not constitutional,'' he said. And that is the best this noted jurist, this legal scholar, longtime judge, an expert on national security law had to offer on the defining moral issue of this Presidency. Claims of ignorance. Word games.

Now-Attorney General Mukasey was asked the easiest question we have in a democracy: Can the President of the United States openly break the law? Can he, as we know he has already done, order warrantless wiretapping, ignore the will of Congress, and then hide behind nebulous powers he claims to find in the Constitution? The response of the nominee to become Attorney General: The President has ''the authority to defend the country.'' In one swoop, the Attorney General conceded to the President nearly unlimited power, just as long as he finds a lawyer willing to stuff his actions into the boundless rubric of ''defending the country''—unlimited power to defend the Nation, to protect us as one man sees fit, even if that means listening to our phone calls without a warrant, even if it means holding some of us indefinitely. That is contempt for the rule of law.

So this is very much about torture—about enhanced interrogation measures and waterboarding. It is also about extraordinary rendition—outsourced torture of men this administration would prefer we didn't even know exist.

But now we do know. One was a Syrian immigrant raising his family in Canada. He wrote computer code for a company called MathWorks and was planning to start his own tech business. On a trip through New York's JFK Airport, he was arrested by U.S. federal agents. They shackled him and bundled him onto a private CIA plane and flew him across the Atlantic Ocean to Syria. This man spent the next 10 months and 10 days in a Syrian prison. His cell was 3 feet wide—the size of a grave. Some 300 days passed alone in that cell, with a bowl for his toilet, another bowl for his water, and the door only opened so he could wash himself once a week—though it may have been more or less because the cell was dark and he lost all track of time. The door only opened for one reason: for interrogators who asked him again and again and again about al-Qaida.

Here is how it was described:

> The interrogator said, ''Do you know what this is?'' I said, ''Yes, it's a cable,'' and he told me, ''Open your right hand.'' I opened my right hand, and he hit me like crazy. It was so painful, and of course I started crying, and then he told me to open my left hand, and I opened it, and he missed, then hit my wrist. And then he asked me questions. If he does not think you are telling the truth, then he hits you again.

The jail and the torturers were Syrian, but America sent this man there with full knowledge of what would happen to him because it was part of a longstanding secret program of ''extraordinary rendition,'' as it is called. America was convinced that he was a terrorist and wanted the truth beaten out of him.

No charges were ever filed against him. His adopted nation's government, Canada, one of our strongest NATO allies, cleared him of all wrongdoing after a year-long official investigation and awarded him more than $10 million in government compensation for his immense pain and suffering—but not before he was tortured 10 months, 10 days in a 3-foot by 3-foot cell the size of a grave. Does his torture make us safer? Did his suffering improve our security? Of course not.

I would note that our own Government has shamefully refused to even acknowledge that his case exists.

We know about a German citizen as well, living in the city of Ulm with his wife and four children. On a bus trip through Eastern Europe, he was pulled off at a border crossing by armed guards and held for 3 weeks in a hotel room, where he was beaten regularly. At the end of 3 weeks, he was drugged and shipped on a cargo plane to Kabul, Afghanistan. For 5 months, he was held in the Salt Pit—a secret American prison staffed by Afghan guards. All he had to drink was stagnant water from a filthy bottle. Again and again,

masked men interrogated him about al-Qaida, and finally, he says, they raped him. He was released in May of 2004. Scientific testing confirmed his story of malnourishment, and the Chancellor of Germany publicly acknowledge he was wrongly held. What was his crime? Having the same name as a suspected terrorist.

Again, our own Government has shamefully refused to even acknowledge that this case exists.

So we do know, Mr. President. We know because there aren't enough words in the world to cover all the facts.

If you would like to define torture out of existence, be my guest. If you would rather use a Washington euphemism—''tough questioning,'' ''enhanced interrogation''—feel free. Feel free to talk about fraternity hazing, as Rush Limbaugh did, or to use a favorite term of Vice President CHENEY's, ''a dunk in the water.'' You can call it whatever you like. But when you are through, the facts will be waiting for you: controlled death, outsourced torture, secret prisons, month-long sleep deprivations, the President's personal power to hold whomever he likes for as long as he likes. It is as if you had awakened in the middle of some Kafkaesque nightmare.

Have I gone wildly off topic, Mr. President? Have I brought up a dozen unrelated issues? I wish I had. I wish that none of these stories were true. But we are deceiving ourselves when we talk about the U.S. attorneys issue, the habeas issue, the torture issue, the rendition issue, or the secrecy issue as if each were an isolated case, as if each were an accident. When we speak of them as isolated, we are keeping our politics cripplingly small. And as long as we keep this small, the rule of men is winning.

There is only one issue here; that is, the rule of law, the law issue. Does the President of the United States serve the law or does the law serve the President? Each insult to our Constitution comes from the same source. Each springs from the same mindset. If we attack this concept for the law at any point, we will wound it at all points.

That is why I am here this evening, Mr. President. Retroactive immunity is on the table for discussion over these next several days, but also at issue is the entire ideology that justifies it, the same ideology that defends torture and executive lawlessness. Immunity is a disgrace in itself, but it is far worse in what it represents. It tells us that some believe in the courts only so long as their verdict goes their way; that some only believe in the rule of law so long as exceptions are made at their desire. It puts secrecy above sunshine and fiat above the law.

Did the telecoms break the law? I don't know. I can't say so. But pass immunity, and we will never know. A handful of favored corporations will remain unchallenged. Their arguments will never be heard in a court of law. The truth behind this unprecedented domestic spying will never see the light of day, and the cases will be closed forever.

''Law'' is a word we barely hear from the supporters of immunity. They offer neither deliberation about America's difficult choices in the age of terrorism nor a shared attempt to set for our times the excruciating balance between security and liberty. They merely promise a false debate on a false choice: security or liberty but never, ever both.

I think differently, and I believe some of my colleagues do as well. I think America's founding truth is unambiguous: security and liberty, one and inseparable and never one without the other, no matter how difficult the situation, no matter what threats we face. Secure in that truth, I offer a challenge to immunity supporters: You want to put a handful of corporations above the law. Could you please explain how your immunity makes any one of us any safer at all?

The truth is that a working balance between security and liberty has already been struck. In fact, it has been settled for decades—for 30 years, in fact. FISA, the Foreign Intelligence Surveillance Act, has prevented executive lawbreaking and protected Americans, and that balance stands today.

In the wake of the Watergate scandal in the 1970s, the Senate convened the Church Committee, a panel of distinguished former Members of this body determined to investigate executive abuses of power. Not surprisingly, they found that when Congress and the courts substitute ''trust me'' ideas for real oversight, massive lawbreaking can result. The Church Committee found evidence of the 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 rights ''to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.'' At the same time, the Senators of the Church Committee understood surveillance was needed to go forward to protect our people.

Surveillance itself is not the problem. Unchecked, unregulated, unwarranted surveillance was. What surveillance needed, in a word, was legitimacy. And in America, the Founders understood power becomes legitimate when it is shared. Congress and the courts check that 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,'' put the case very powerfully indeed.

> The critical question before the committee was to determine how the fundamental liberties of our people can be maintained in the course of the government's efforts to also protect our people. The delicate balance between these basic goals, two absolutely essential goals of our system of government, is often difficult to strike, and it is never perfect, but it can, and must, be achieved.
>
> A sense of balance between liberty and security, security and liberty.
>
> We reject the view that the traditional 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 Church Committee went on:
>
> We have seen segments of our government, in their attitudes and actions, 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 Church committee Senators concluded:
>
> Unless new and tighter controls are established by legislation, domestic intelligence activities threaten to undermine our domestic society and fundamentally alter its nature.

What a strange echo from three decades ago we hear in those words. They could have been written yesterday; could have been written tonight.

Three decades ago, our predecessors in this Chamber, Republicans and Democrats, responding to an abuse of power, crafted a wonderfully balanced idea between security and liberty. They did it in this very Chamber, coming together. They understood that when domestic spying goes too far it threatens to kill just what it promises to protect—an America secure in her liberty. That lesson was crystal clear 30 years ago. Why is it so clouded today?

Before we entertain the argument that everything has changed since those words were written, remember: The men who wrote them had witnessed a World War, the Cold War, had seen Nazi and Soviet spying, and they were living every day under the cloud of a nuclear holocaust. It was indeed a dangerous time. Certainly, the argument that we have to take extraordinary measures to protect ourselves against those who would do us great injury—those were not easy times. Yet those Republicans and Democrats, our predecessors in this Chamber, struck that balance and reminded us that our security was important, but it needed to be tempered and understood in the context of our freedoms and our liberties.

So I ask this: Who will chair the commission investigating the secrets of warrantless spying years from today? Will it be a young Senator in the body today who maybe has just joined us in the last 2 years? Will it be someone not yet elected? What will that Senator say when he or she comes

to our actions, maybe three decades from now, as I just quoted from a report 30 years ago, which is so wonderfully written and captures exactly the essence of what I am arguing for this evening? What will that Senator say when he or she reads about the actions of a Senate here—reads in the records how we let outrage after outrage slide with nothing more than a promise to stop the next one? I imagine that Senator will ask of us: Why didn't they do anything? Why didn't they fight back? What happened between the 1970s and the year 2008, that two Senates in 30 years time could go from standing up for the rule of law and liberty in the face of executive abuses—what happened to that Congress that decided 30 years later that they would do just the opposite; in fact, retreat from that fight?

In June of 2008, when no one could doubt any more what this administration was doing, why did they sit on their hands and do almost nothing? In fact, go further. Why did they grant immunity to companies that had engaged in warrantless wiretapping?

Since the time of the Church Commission, the threats facing us have multiplied and grown in complexity, but the lesson has been immutable: warrantless spying threatens to undermine our democratic society unless legislation brings it under control. In other words, the power to invade privacy must be used sparingly, guarded jealously, and shared equally between the branches of our Government.

Or the case could be made pragmatically. As my friend, Harold Koh, dean of Yale Law School, recently argued:

> The engagement of all three branches tends to yield not just more thoughtful law but a more broadly supported public policy.

Three decades ago, our predecessors in this Chamber embodied that solution in the Foreign Intelligence Surveillance Act, the FISA law. 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 warrants 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 last summer:

> The United States 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 numerous times, I might add, FISA has accomplished its mission. It has been a valuable—invaluable tool for conducting needed surveillance of those who would do us great harm and those who would harm our country. Every time Presidents have come to Congress openly to ask for more leeway under FISA, our Congresses have worked with them. Congress has negotiated, and together Congress and the executive branch have struck a balance that safeguards America while doing its utmost to protect our privacy.

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

Isn't that enough?

Just this past October and November, the Senate of the U.S. Intelligence and Judiciary Committees worked with the President to further refine FISA and ensure that, in a true emergency, the FISA Court would do nothing to slow down intelligence gathering.

Wasn't that enough?

And, as for the FISA Court, between 1978 and 2004, according to the Washington Post, the FISA Court approved—and listen to these numbers—18,748 warrants from 1978 to 2004—18,748 warrants. It rejected 5; 18,748 warrants were approved; 5 were rejected between 1978 and 2004. The FISA Court has sided with the executive branch 99.9 percent of the time. Wouldn't you think that would be enough? Is anything lacking? Have we forgotten something here? Isn't all of this enough to keep us safe? There were numerous amendments in 30 years to a piece of legislation to strike the balance between security and liberty.

Of course, we all know the answer we have received. This complex, finely tuned machinery, crafted over 3 decades by 3 branches of Government, 4 Presidents, and 12 Congresses, was ignored for 5 long years. It was totally ignored. It was a system primed to bless nearly any eavesdropping a President could conceive of, and spying still happened illegally—18,748 warrants approved from 1978 on; 5 were turned down. Yet this administration completely disregarded the FISA Court in seeking the warrantless wiretapping by the telecom industry.

If the shock of that decision has yet to sink in, think of it this way: President Bush 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. A more compliant court has never been conceived. Yet still that wasn't good enough.

I ask my colleagues of this body candidly, and candidly it already knows the answer: Is this about security or is it about power? Why are some fighting so hard for retroactive immunity? The answer, I believe, is that immunity means secrecy, and secrecy means power. It is no coincidence that the man who proclaimed ''if the President does it, it is not illegal''—Richard Nixon—was the same man who raised executive secrecy to an art form. The Senators of the Church committee 30 years ago—bipartisan, by the way—expressed succinctly the deep flaw in the Nixonian executive: ''Abuse thrives on secrecy,'' they said, and in the exhaustive catalog of that report, they proved it.

In this push for immunity, secrecy, I believe, is at the center of it. We find proof in immunity's original version, a proposal to protect not just the telecoms, but everyone involved in the wiretapping program. Remember that in the original proposal of what is before us today, or will be before us, that is what they wanted to immunize—themselves. The administration asked that everyone be immunized. To their credit, the Intelligence Committee rejected that request, but it ought to be instructive that the Bush administration requested total blanket immunity for everyone involved in that program.

What does that tell you about their intentions or their motivations? Think about it. It speaks to their fear and perhaps their guilt, their guilt that they have 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 concerned.

Thankfully, immunity for the Executive is not part of this bill, and, again, I congratulate the committee. But don't ever forget it was asked for. That will tell you something about motivations.

The original proposal tells us something very important, that this is and always has been a self preservation bill. Otherwise, why not have the trial and get it over with? If the proponents of retroactive immunity are right, that the documentation alone is all you need to prove legality, the corporations will win in a walk. After all, in the official telling, the telecoms were ordered in documents to help the President spy without a warrant, and they patriotically complied. We have even heard on this floor the comparison between the telecom corporations to the men and women laying their lives on the line in Iraq and Afghanistan.

But ignore comparison which, frankly, I find deeply offensive. Ignore for a moment the fact that in America we obey the laws, not the President's orders. Ignore that not even the President has the right to scare or bully you into breaking the law, though it seems that tactic has proven surprisingly fruitful. Ignore that the telecoms were not unanimous. One of them, Qwest, wanted to see the legal basis for the order, never received it, and so refused to comply. Not everyone decided that documentation alone was a legal justification for 5 years of vacuuming up the private information of American citizens.

Ignore that a judge presiding over the case ruled:

> 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 then they have a 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 5 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 they are afraid of leaks. Our Federal court system has dealt for decades with the most delicate national security matters, building up an expertise in protecting classified information behind closed doors, ex parte and in camera. We can expect no less in these cases. No intelligence sources need be compromised. No state secrets need to be exposed. After litigation at both the district court and circuit court levels, no state secrets have been exposed.

In fact, Federal district court judge Vaughn Walker—a Republican appointee, I might point out; the quotes are from him—has already ruled that the issue can go to trial without putting state secrets in jeopardy. Walker reasonably pointed out—Ronald Reagan's appointee to the bench, I point out—the existence of the terrorist surveillance program is hardly a secret at all.

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

As the state secrets privilege is invoked to stall these high-profile cases, it is useful to consider that privilege's history. In fact, the privilege was tainted at its birth by a President of my own party, Harry Truman. In 1952, President Truman successfully invoked the new privilege to prevent public exposure of a report on a plane crash that killed three Air Force contractors. When the report was finally declassified, 50 years later I might add, decades after anyone in the Truman administration was within reach, it contained no state secrets at all, only facts about the repeated maintenance failures that would have seriously embarrassed some important people. So the state secrets privilege began its career, not to protect our Nation, but to protect some powerful people.

In his opinion, Judge Walker argued, even when it is reasonably grounded—let me quote him:

> . . . 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.

Again, that is not some wild-eyed liberal judge drawing the conclusion in this case. That is a sober conservative judge who reminds us of the balance that is necessary; why there is a co-equal branch called the judiciary, where that body, not elected representatives in a voting Chamber, should determine the legality of this action taken by these companies.

He went on to say—the judge's words:

> 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 is a judge reminding this body that to suggest somehow we grant blanket immunity to these companies is to dismiss this case at the outset, as he points out, sacrificing liberty with no apparent enhancement of our security.

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

It is equally wrong to claim that failing to grant this retroactive immunity will make the telecoms less likely to cooperate with surveillance in the future. Baloney. I do not believe it. The truth is, after the 1970s, FISA has compelled telecommunications companies to cooperate with surveillance when it was warranted. What is more, it immunizes them. It has done that for more than a quarter of a century. So cooperation in warranted wiretapping is not at stake today, and despite the claims of supporters of immunity, it never has been. Collusion in warrantless illegal 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, even when that warrant, as we permit, is granted after the surveillance has already begun, as you can under the FISA 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. It does jeopardize our liberty. And it would only expose one secret: the extent to which the rule of law has been trampled upon. Does documentation qualify as legal authority? Again, that is not a matter for a majority in this Chamber to decide by a vote. It is a matter for our courts to determine: Were these letters that were transmitted—was there a legal justification? Why didn't the administration go to the FISA Court, where 18,748 requests have been made since 1978 and granted, and only 5 rejected, a secret Federal court where a warrant could have been granted after the fact of the surveillance actually having begun? Why didn't they do that? Why did they send out letters? Why didn't they go before that court? I am not concluding they did it wrongfully, but I don't know they didn't do it wrongfully. That ought to be determined by the courts of law, not to be above the law.

That is the choice at stake today: Will the secrets of the last years remain closed in the dark, as they will once we grant this immunity, or will they be open for generations to come? What will they think of us? I revere what this Congress did in 1978, Democrats and Republicans, standing up to executive powers and abuses. They fashioned a law that granted us greater protection over those who would do us harm while simultaneously protecting our rights and liberties. What a great Senate. What a great Congress that had the courage to stand up and put aside partisan differences and stand up for 200 more years of this Nation's history of liberty, of freedom.

What will be said about this Congress? When a future generation looks back at this hour, what did we do when faced with a similar fact situation and were confronted with that choice? Or will we be open to the generations to come, as I said, to our successors in this Chamber so they can prepare themselves to defend against future outrages, as they will surely occur, of power and usurpations of law from future Presidents of either party? As I stand here this evening, I promise you it will happen. It has never not happened in the past; it will in the future. That is why we have these shared powers to maintain that balance. We are going to concede that by suggesting that in this most important of all cases we are going to grant retroactive immunity. For what? For what? Can anyone even begin to make the case that our security gets enhanced because we deprive Americans who feel they may have been wronged by determining whether the actions taken by these companies at the behest of an administration were legal?

Now, 30 years after the Church committee, history has repeated itself. If those who come after us are to prevent it from happening again, they need the full truth. That is why we must not allow these secrets to go quietly into the night. I am here this evening because the truth is no one's private property; it belongs to every one of us. It demands to be heard.

''State secrets,'' ''patriotic duty,'' those, as weak as they are, are the arguments the telecoms' advocates use when they are feeling high-minded. When their thoughts turn baser, they make their arguments 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. Some of them have continued to earn record profits and sign up record numbers of subscribers at the same time as this very public litigation, totally undermining the argument that these lawsuits are doing the telecoms severe reputational damage, as Mike McConnell suggested. Companies of that size could not 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 then hand down such back-breaking penalties, is already to take several leaps.

Opponents of immunity, including myself, have stated that we would support a reasonable alternative to a blanket retroactive immunity. No one seriously wants to cripple the telecommunications industry. The point is to bring checks and balances back to domestic spying. Accepting that precedent would hardly require a crippling judgment. It is much more troubling, though, that the Director of National Intelligence would even suggest such an argument. I might understand if the Secretary of the Treasury made that case, or some economist at the World Blank or the IMF or the Federal Reserve. But to have the Intelligence Director of our country suggest liability protections for private sector entities, even to speak of that, is rather incredible. This is not the Secretary of Commerce we are talking about but the head of our Nation's intelligence efforts.

For that matter, how does that even begin to be relevant to letting this case go forward? Since when did we throw out entire suits because the defendants stood to lose too much? It astounds me that some can speak in the same breath 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.

And so, at the rock bottom of its justifications, the telecoms' advocates are essentially arguing that immunity can be bought. The truth is, of course, exactly the opposite, or it should be. The larger the corporation, unfortunately, the greater the potential for abuse.

No one suggests that success should make a company suspect. Companies grow large and essential to our economy because they are excellent at what they do, and most of them are overwhelmingly well managed. But the size and wealth open the realm of possibility for abuse far beyond the scope of the individual.

After all, if the allegations are true, we are talking about one of the most massive violations of privacy in American history. Shouldn't there be some retribution or penalty? If reasonable search and seizure means opening 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 of the floorboards.

The scale of these corporations opens unprecedented possibilities for abuse, possibilities far beyond the power of the individual. What the telecoms have been accused of could not be done by one man or even 10. It would be inconceivable without the size and resources of a large corporation, the same size that makes Mike McConnell fear the corporation's day in court. That is the massive scale we are talking about. And that massive scale is precisely why no corporation must be above the law.

On that scale, it is impossible to plead ignorance. As Judge Walker ruled:

> AT&T cannot seriously contend that a reasonable entity in its position could have believed that the alleged domestic dragnet was legal.

Again, Ronald Reagan's appointee to the Federal bench. But the arguments of the President's allies sink even lower. Listen to words of a House Republican leader spoken on FOX News. They are shameful:

> I believe that they deserve immunity from lawsuits out there from typical trial lawyers trying to find a way to get into the pockets of American companies.

Of course, some of the ''typical greedy trial lawyers'' bringing these suits actually work for a nonprofit. And the telecoms that some want to portray as pitiful little Davids actually employ hundreds of attorneys, retain the best corporate law firms, and spend multimillion dollar legal budgets every year.

But if the facts actually mattered to immunity supporters, we would not be here. For some, the prewritten narrative takes precedence far above the mere facts; and here it is the perennial narrative of the greedy trial lawyers.

With that, some can rest content. They can conclude that we were not ever serious about law, or about privacy, or about checks and balances; it was all about money all along.

There can no longer be any doubt: One by one the arguments of the immunity supporters, of the telecoms' advocates, fail.

I wish to spend, if I could, a few minutes reviewing in detail those claims and their failures. I will put up some of these quotes here for you.

The first argument is: The President has the authority to decide whether the telecoms should be granted immunity.

The facts are the judiciary, not the executive branch, should be allowed to determine whether the President of the United States has exceeded his powers by obtaining from the telecoms wholesale access to domestic communications of millions of ordinary citizens. That is one of the arguments of those who argue that the granting of immunity is a Presidential prerogative. I argue quite the opposite. The court should not simply be in the business of certifying that the companies received some form of documentation, some letters that they received; rather, they should be allowed to evaluate the validity of the legal arguments attested to in the document. Was the request legal or not? Is a letter a legal document that requires you to cooperate?

Remember, the administration's original immunity proposal protected everyone, as I said a moment ago, involved in the wiretapping program, not just the companies. In their original proposal to the Congress, they wanted to immunize themselves as well. As I said, thankfully the committee disregarded that request. They made it. But, again, I think that is instructive.

The second argument: Immunity supporters claim that only foreign communications were targeted, not Americans' domestic calls.

And here, litigation against the telecom companies is based upon clear, firsthand evidence, authenticated by those corporations in court. Every e-mail, every text message, every phone call, foreign or domestic carried over the massive fiber optic links of 16 separate companies, routed through AT&T's Internet hub in San Francisco, have been knowingly diverted by AT&T by means of multiple splitters into a secret room controlled exclusively by the NSA. There may be other such rooms as well.

This was given to the courts by the individual who was involved directly in the program. So the argument was only conversations between foreign targets that they have argued is completely and factually wrong.

The third argument immunity supporters make is that: A lack of immunity will make the telecoms less likely to cooperate.

Again, I made this case a moment ago. But for more than 25 years the FISA legislation has compelled the telecommunications companies to cooperate. This is not a choice if, in fact, the FISA courts demanded it. In fact, when they have done that, what they do is they also immunize, so they can protect these companies against future litigation that can occur from people who claim they have done something wrong in the process.

But to argue somehow these companies might never again be helpful is to not understand existing law. For 25 years they have, in fact, been compelled to comply and, in fact, we provided the immunity when they have done so.

Why in this case, after 25 years, did the Bush administration completely disregard this? And instead of compelling their compliance, and providing the immunity they would have gotten immediately, they decided to send a letter instead, without any legal documentation, without any argument at all. But they are relying on that thin reed of a letter saying, ''You should do this.'' ''We want you to do this.''

Not all of them complied. Qwest said: Wait a minute, that is not legal. A letter is not enough. They did not comply, and obviously they did not get involved in the program and they were not asked to do so further. So I am rather mystified. Shouldn't we know the answer to that question? Is it wrong for us to say: I think you ought to explain why you think that was legal?

Why was a document legal? The fact that we are immunizing, in effect, through retroactive immunity, their actions, what sort of precedent are we setting? That we are in a sense, if you

will, almost sanctioning that action. While we are saying it should never happen again, I will almost guarantee you that someday someone will do something like it and will refer to this Congress's decision to, in effect, sanction the use of letters alone without documentation to determine the legality of their actions.

The fourth argument: Immunity supporters argue that telecoms can't defend themselves without exposing State secrets. This is highly offensive. Again, Judge Walker has already ruled the issue can go to trial. In fact, he was incensed, as I quoted earlier.

''The Government,'' he said, ''has [already] disclosed the general contours of the 'terrorist surveillance program,' which requires the assistance of a telecommunications provider.''

The suggestion that State secrets—I know the Presiding Officer is a former attorney general, and I am preaching to the choir on these matters, but I am confident he knows that for decades Federal courts meeting ex parte in camera have religiously guarded State secrets when they have been asked to make judicial decisions about matters involving information that could fall into the area of State secrets. I don't know of any example where leaks have occurred. So the suggestion that if you allow this to go into Federal court to determine the legality of this action, actions that now are publicly well known, that somehow we are going to have a leak of State secrets, there is not a scintilla of evidence that has ever been the case. It is a phony argument to suggest that somehow State secrets would be jeopardized.

Five: Immunity supporters claim they are already protected by common law principles. In this case, of course, the fact is that common law immunities do not trump specific legal duties imposed by statute, such as the specific duties Congress has long imposed on the telecommunications companies to protect customer privacy and records. In the pending case against AT&T, the judge already has ruled unequivocally that AT&T cannot seriously contend that a reasonable entity in its position could have believed the alleged domestic dragnet was legal. Even so, the telecommunications company defendants can and should have the opportunity to present these defenses to the courts, and the courts—not Congress preemptively—should decide whether they are sufficient. Again, common law does not trump specific legal duties imposed by statute.

The sixth argument immunity supporters claim is that leaks from the trial might damage national security. I have already talked about this. I said that the Federal courts over the years have handled matters very well, and this is a red herring. When, if ever, then, can we challenge the legality of actions in Federal courts? If the case is made in this case, if this is upheld and we buy into that argument on this matter, which is already publicly known but also, in a sense, siding, if you will, with this argument by granting retroactive immunity, then in cases where, in fact, national security information may, in fact, be at risk, I suspect the same argument will be made, and they will be relying on the actions taken by the Senate, in this case, involving the telecom companies. This is the kind of precedent-setting action that could occur by our vote to grant retroactive immunity, if we buy into this very argument, which is a dangerous argument, indeed, to suggest somehow that our Federal courts are incapable of providing the kind of security where national security leaks could occur. We can be increasingly confident that these cases will not expose State secrets based on history.

The seventh argument made by the supporters of this effort to grant retroactive immunity, they claim that litigation will harm the telecoms by causing them reputational damage. I hesitate to even make an argument against this, it is so offensive to me. The fact that the Director of the National Security Agency would suggest somehow there was a financial loss to the companies if we went further with this, that is not the kind of argument I expect to be made by someone who is in charge of intelligence. That is an economic argument. It doesn't hold up, in my view. We are talking about wealthy companies. But even so, I don't know if anyone is suggesting that these actions, if, in fact, they prove to be true, that, in fact, there was an illegal action taken here, would necessarily warrant an overexcessive judgment that would somehow cripple these 17 companies from their financial well-being.

There is plenty of evidence that they are doing tremendously well. But the idea somehow that a company ought not to be sued, that a plaintiff ought not to bring a case because you might win and there might be damage financially, that is a ludicrous argument on its face to make when we are talking about millions of people's rights of privacy being invaded for 5 years by 17 companies vacuuming up every bit of information, that you might be damaged because the plaintiffs might win. It is a foolish argument and a dangerous one to make as well.

The eighth argument, immunity supporters claim the lawsuits will bankrupt the companies. It is the same argument as I made about financial damage. The fact is, if we accept that premise about financial damage or reputational damage, if we could conceive of a corporation so wealthy, so integral to our economy that its riches place it outside the law altogether, that is a frightening concept, and I hope it will be rejected by our colleagues. Ensuring a day in court is not the same as ensuring a verdict. When that day comes, if it does—and I doubt it will, in light of the votes that have been cast in the past—I have absolutely no investment in a verdict either way. But I am bothered by it. I am bothered that the administration didn't go to the FISA Court, as others had 18,748 times since 1978, and on five occasions the warrants were rejected, and in 18,748 cases, the warrants were granted, that this administration decided not to go that route, I have my doubts. But nonetheless, what I am calling for is not a verdict by this body. All I am calling for is to allow a judgment to be rendered by a court of law, allow plaintiffs to make their case, allow a Federal judge in that coequal branch of government to determine whether what occurred was legal. If it was legal, case over. If it was not, then allow the plaintiffs to make their case and be rewarded accordingly.

But by a vote of 51 to 49 or whatever the vote may be here, we are going to superimpose our judgment for a legal argument. I think letting a political judgment replace a legal judgment is a dangerous precedent indeed. This is a big matter. We ought to have the courage to stand up to this administration, after a litany of abuses over the last 7 years. As I said some time ago, if this had been for a week, a month, a year, after 9/11, I would not be here tonight. I am a reasonable, practical person. The emotions were high; fears were great after we were attacked. The fact that someone might have rushed in and done something like this, I might not like it, I may worry about it, but I wouldn't prejudge it. Emotions could be such that one would take those actions. But this went on for 5 years and would still be going on if a whistleblower hadn't stood and said: This is what is happening. And it was reported widely in the national media. That is the only reason it stopped. If not, it would be still going on. So it wasn't one of these early events that can sometimes happen in which reasonable people ought to be able to step back and say: I understand why that happened.

If we were talking about an administration that had been upholding the rule of law over the last 7 years or had been defending it, I might also not be standing here. But how many lessons do we have to learn about an Attorney General politicizing U.S. attorneys, rendition, torture, walking away from habeas corpus, walking away from the Geneva Conventions? How many more examples do we have to have of how this administration regarded the rule of law? And yet at the end of all that, within months of this administration leaving town, this body is going to say: We are going to side with the administration, grant immunity, and we will never find out what went on here. Why did this crowd seek immunity for itself, if it wasn't fearful about a judgment or a court of law examining what happened here? When letters became the legal basis rather than going to the very court that had been around for 30 years, that had provided warrants over and over again in 99.9 percent of the cases, why did this administration decide not to go that route and seek that

kind of a warrant from the very secret court established to strike that balance between the needed security and surveillance we should have and balancing those rights so the judgments could be rendered?

Just as it would be absurd to declare the telecoms clearly guilty, it would be equally absurd to close the case in Congress without a decision. That is immunity.

Throughout this debate, telecoms' advocates have needed to show not just that they were right but that they are so right and that they are so far beyond the pale that we can shut down the argument right here and now with a vote, grant them immunity. That is a burden they have clearly not met, in my view, in any of the arguments, all eight of them, that they have made. They cannot expect to meet it when a large majority of our colleagues who will make that decision have not even seen the secret documents that are supposed to prove the case for retroactive immunity.

My trust is in the courts, in the cases argued openly, in the judges who preside over them, and in the juries of American citizens who decide them. They should be our pride, not our embarrassment. They deserve to do their jobs. That is what the Founders created. It has been a great system of checks and balances, coequal, three coequal branches of Government—an executive, a legislative, and a judicial branch. We have an executive branch that took action. We are going to have a legislative branch that is going to sanction it by granting immunity without ever allowing that coequal branch of Government to determine the legality of their actions. We are depriving what the very Founders of our country insisted upon.

This isn't about being a Democrat, a Republican, a liberal or a conservative. It is about whether you understand the rule of law, that no man, not even the President, is above it. Whether this President was of my party or anyone else's, I would stand here with the same degree of passion in making this case. A case I know I have lost in the past but I care so deeply about that I want my children and my grandchildren one day to know that their father and grandfather at this moment stood for the rule of law. And I believe my colleagues, if given the chance to think about this, will reach the same conclusion.

This is one of those moments. They don't happen very often, but they do happen here. We have learned about them only after the fact too often. But this one is before us as it has been over the last number of months. We owe it not only to ourselves but to future generations to stand for these timeless principles of the rule of law, liberty, and security. As complex, as diverse, as relentless as the assault on the rule of law has been, our answer to it is a simple one. Far more than any President's lawlessness, the American way of justice remains deeply rooted in our character that no President can disturb.

So on this evening, I am full of hope, on a dark day, when it may seem we are going to lose this case once again, I would like to have faith that we can unite security and justice because we have already done it. It is not a choice, one or the other. It can never be that. That is a false choice and a false dichotomy. Justice and security is what our forebears have given us, what our predecessors have struggled with, and which we now must wrestle with ourselves. It is never perfect. There is always one side maybe a bit more weighty than the other, but it is our responsibility to try and strike that balance, to keep us secure in the face of those who would do us great harm and to do so at a time without giving up our rights and liberties. To do so is to change the very nature of who we are as a people. To succumb to the fears of those who would suggest that you have to make choices about being more secure or being free, I don't believe that.

In fact, I think if we give up freedoms, we become far less secure and far less safe. That is the judgment we must now make, whether we can be secure and free and guarantee those liberties to go forward.

My father was the executive trial counsel at the Nuremberg trials in 1945 and 1946. I have never forgotten the example he set, as Justice Robert Jackson said in the opening statement at the Nuremberg trials, a statement, by the way, that my parents made us memorize as children because it captured the essence of the Nuremberg trials. The rule of law is what motivated those who insisted upon that trial. The overwhelming majority of people did not want a trial. Why should you spend the money giving these 21 defendants a lawyer? Fifty-five million people had died at the hands of the Nazis and their allies; 6 million Jews had been incinerated in the concentration camps; 5 million others had the same fate befall them because of their political affiliation, their ethnicity, their sexual orientation; 11 million people incinerated; 45 million died at their hands. Why in the world would you ever give them a trial?

Why not, as Winston Churchill suggested, just line them up and shoot them? Just line them up and shoot them. They did not deserve civility. But Robert Jackson; Henry Stimson, the Secretary of War under Franklin Roosevelt—a Republican, I might add; the only one in Roosevelt's Cabinet—Samuel Rosenman, a great speechwriter for Franklin Roosevelt; Robert Jackson, a Supreme Court Justice, and a handful of others stood up and said: No, that war was not about treasury or treasure or land, it was about values and principles, and the principle of the rule of law is something we stood for.

So despite all of the appetite for vengeance, we are not going to give these defendants that which they gave to their victims. We are going to prove the difference. We are going to give them that which they never gave their victims. They are going to get a day in court. They are going to live with the rule of law.

Robert Jackson, speaking to that Court, in the summer of 1945, said the following, which I memorized years ago. Speaking about the Soviet Union, the French, the British, and ourselves, he said the following:

> That four great nations, flushed with victory and stung with injury, stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of the law is one of the most significant tributes that Power has ever paid to Reason.

It is a remarkable sentence, and it captured the essence of Nuremberg—the rule of law. From that experience, America led the way in creating the structures in architecture that gave us almost 70 years of global peace. The IMF, the World Bank, Bretton Woods, the expansion of the United Nations, NATO—all of those institutions occurred because of the moral high ground we achieved by insisting upon the rule of law.

It was Nuremberg, in many ways, that conjured up the image of who we were as a people. Compare that with the words ''Guantanamo,'' ''Abu Ghraib,'' ''renditions,'' ''torture,'' ''habeas corpus,'' ''walking away from the Geneva Conventions.'' This is not who we are. Nuremberg was who we are, not Guantanamo, not giving retroactive immunity where the rule of law is being abused, or potentially being abused. That is why we are here.

Each generation has been asked to defend these principles and values, and each generation in its own way has done that. I believe our generation can and must as well. Therefore, the challenge before us is not a simple one, but an easy one, in my view; that is, to stand up for this principle.

The world is not going to collapse, the sky is not going to fall if some companies have to face some plaintiffs and explain why they vacuumed up all their private information for more than 5 years. What was the legal justification for that action? To grant retroactive immunity would, in fact, do just that.

So what is the tribute that Power owes to Reason? That America stands for a transcendent idea, the idea that laws should rule, and not men, the idea that the Constitution does not get suspended for vengeance, the idea that this Nation should never tailor its eternal principles to the conflict of the moment, because if we did, we would be walking in the footsteps of the enemies we despised.

The tribute that Power owes to Reason is due today as well. I know we can find the strength to pay it. And if we cannot, we will have to answer for it, I fear.

There is a famous military recruiting poster that comes to mind. A man is sitting in an easy chair with his son

and daughter on his lap, after some future war has ended. His daughter is asking him, ''What did you do in the war?'' And his face is shocked and shamed because he knows he did nothing.

My little daughters, Grace and Christina, are 6 and 3. They are growing up—I hope sound asleep at this hour, as I speak in the late night hours here, but they are growing up in a time of two great conflicts: one between our Nation and its enemies, and another between what is best and worst in our American soul. And someday soon, I know I am going to hear that question: What did you do at the time when this conflict was emerging? What side did you take? I want more than anything else, when that day comes, to give the right answer, that I stood for the rule of law.

That question is coming to each and every one of us in our own way. Every single one of us will be judged by a jury from whom there is no hiding: our sons and daughters and grandchildren. Someday soon, they will read in their textbooks the stories of a great nation—one that threw down tyrants and oppressors for two centuries, one that rid the world of Nazism and Soviet communism, one that proved that great strength can serve great virtue, that right can truly make might.

And then they will read how, in the early years of the 21st century, that nation could have lost its way. We do not have the power to strike that chapter. But we cannot go back. We cannot un-destroy the CIA's interrogation tapes. We cannot un-pass the Military Commissions Act. We cannot un-speak Alberto Gonzales's testimony before the Congress. We cannot un-torture innocent people. We, perhaps, sadly and shamefully, cannot stop retroactive immunity. We cannot undo anything that has been done in the last 6 years for the cause of lawlessness and fear. We cannot block out that chapter. But we can begin the next chapter, even this evening, even in the days to come, as we debate this issue. And let its first words read: Finally, in the month of June of 2008, the Senate of the United States—Democrats and Republicans—said: Enough. Enough is enough.

I implore my colleagues to write it with me. I implore my colleagues to vote against retroactive immunity and vote against cloture when that opportunity arrives in the next day or so. I think it would be a mistake to grant it. I think we can do better. I think we can reform the law. But we ought not to have any decision be above the law, as is the danger here.

Mr. President, I want to, if I can, share with my colleagues, and those who may be listening to all this, some articles because their eloquence is far greater than mine when they talk about the importance of all of this, and they are worth noting and reading as we examine this question before us.

There have been editorials and others that have addressed this issue. There is an editorial in the New York Times from June 18, entitled: ''Mr. Bush v. the Bill of Rights.''

In the waning months of his tenure, President Bush and his allies are once again trying to scare Congress into expanding the president's powers to spy on Americans without a court order.

This week, the White House and Democratic and Republican leaders on Capitol Hill hope to announce a ''compromise'' on a domestic spying bill. If they do, it will be presented as an indispensable tool for protecting the nation's security that still safeguards our civil liberties. The White House will paint opponents as weak-kneed liberals who do not understand and cannot stand up to the threat of terrorism.

The bill is not a compromise. The final details are being worked out, but all indications are that many of its provisions are both unnecessary and a threat to the Bill of Rights. The White House and the Congressional Republicans who support the bill have two real aims. They want to undermine the power of the courts to review the legality of domestic spying programs. And they want to give a legal shield to the telecommunications companies that broke the law by helping Mr. Bush carry out his warrantless wiretapping operation.

The Foreign Intelligence Surveillance act, or FISA, requires that government to get a warrant to intercept communications between anyone in this country and anyone outside it. The 1978 law created a special court that has approved all but a handful of the government's many thousands of warrant requests.

Still, after Sept. 11, 2001, Mr. Bush bypassed the FISA court and authorized the interception of international calls and e-mail messages without a warrant. Then, when The Times disclosed the operation in late 2005, Mr. Bush claimed that FISA did not allow the United States to act quickly enough to stop terrorists. That was nonsense. FISA always gave the government the power to start listening and then get a warrant—a grace period that has been extended since Sept 11.

More fundamental, Mr. Bush's powers do not supersede laws passed by Congress or the constitution's protections against unreasonable searches and seizures.

The ensuing debate did turn up an Internet-age problem with FISA: It requires a warrant to eavesdrop on foreign communications that go through American computers. There was an easy fix, but when Congress made it last year, the White House muscled in amendments that seriously diluted the courts' ability to restrain the government from spying on its own citizens.

That law expires on Aug. 3, and Mr. Bush is demanding even more power to spy. He also wants immunity for the telecommunications companies that provided the government with Americans' private data without a warrant after Sept. 11.

Lawsuits against those companies are the best hope of finding out the extent of Mr. Bush's lawless spying. But Democratic leaders in Congress are reported to have agreed to a phony compromise drafted by [one of our colleagues], the Republican vice chairman of the Intelligence Committee.

Under the so-called compromise, the question of immunity would be decided by federal district court—a concession by Mr. Bond [our colleague from Missouri], who originally wanted the FISA court, which meets in secret and is unsuited to the task, to decide. What is unacceptable, though, is that the district court would be instructed to decide based solely on whether the Bush administration certifies that the companies were told the spying was legal. If the aim is to allow a court hearing on the president's spying, the lawsuits should be allowed to proceed—and the courts should be able to resolve them the way they resolve every other case. Republicans, who complain about judges making laws from the bench, should not be making judicial decision from Capitol Hill.

This week, House and Senate leaders were trying to allay the concerns of some lawmakers that approving the immunity would be tantamount to retroactively declaring the spying operation to have been legal. Those lawmakers are right. Granting the corporations immunity would send that exact message.

The new bill has other problems. It gives the government too much leeway to acquire communications in the United States without individual warrants or even a showing of probable cause. It greatly reduces judicial review, and it would remain in force for six years, which is too long.

If Congress cannot pass a clean bill that fixes the one real problem with FISA, it should simply extend the temporary authorization. At a minimum . . .

It talks about what other steps can be taken.

There are several other articles I want to share with colleagues, but let me also say to my colleagues, we are in a postcloture environment here on the housing bill. We will be in cloture until tomorrow evening on the 30 hours required under the housing bill, unless some intervening action is taken. I know we are supposed to consider voting on cloture on this bill sometime tomorrow morning. I reserve the right to use whatever vehicle is available to me. While I am upset we are not dealing with the housing bill—I believe that is a priority on which Americans expect something to be done. You have 8,400 people filing for foreclosure every day in this country. It is a massive economic issue that is crippling the livelihood and the future wealth and security of too many American families. I would object to any unanimous consent request to go to the FISA bill. If we do get to a cloture motion, I will be urging my colleagues to vote against cloture, to send this bill back to the Intelligence Committee, the Judiciary Committee, and craft some reforms of FISA, but stay away from this retroactive immunity. It is not needed. It is unnecessary. It is shameful it is even being requested in this bill for all the reasons I have identified earlier.

Let me read, if I can, from the New Jersey Star-Ledger. Again, this paper calls for rejecting the wiretap bill, as well. This editorial says:

The House of Representatives is to vote today on a wiretapping bill that would give some of America's biggest and richest companies a get-out-of-jail card for breaking the law and that also would help the government carry out unsupervised snooping for years in the future.

But Verizon and other telecommunications companies should not be rewarded with immunity against lawsuits for agreeing to perform President Bush's illegal eavesdropping. They should answer for their actions in court, just like any other citizen.

And Congress should not gut the current law that says a federal judge's review is essential to avoid the very abuses of power that Bush's White House embraced.

The House ''compromise'' wiretapping bill is not a compromise at all. It would give the telecommunications companies absolute immunity from the suits pending against them for wiretapping if they can simply show that the Bush administration told them at the time that the snooping was legal. Which everyone agrees the administration did indeed do.

It is not a debate. They sent letters. The question is, were the letters and the documentation a legal justification? We already know they sent the letters, so all they are providing for us in here is tantamount to acknowledging what we already know occurred. What we are not getting to is the legal conclusion that those documents not seeking the warrants of the FISA court was a legal justification for their actions. It does not take a legal scholar to see the danger in this approach. It means that the law becomes whatever the President wants it to be, never mind what the statutes or even the Constitution may say. That is why the courts exist. That is why you have Federal judges to make those determinations.

This editorial goes on to say:

The President also very much wants the other major part of the new wiretapping law, the section that amounts to an aggressive broadening of federal surveillance powers. The provisions would emasculate the ability of federal judges to review wiretapping orders, especially if the orders were for a general information ''dragnet'' as opposed to targeting specific persons.

Snooping government agents would be officially free to plug into phone and data lines and copy and review untold millions of calls and e-mails, all without serious adult supervision. Effective checks and balances in government this is not.

Bush and Attorney General Michael Mukasey want the new law—

The editorial goes on to say—

and they want it now. House Members—

Talking about the House-passed bill—

should not give it to them. Government wiretapping is now operating under a series of interim laws set to expire in early August.

There is no evidence that these interim rules are too anemic to protect the Nation for a while longer. Congress should extend them. If the wiretapping law needs major revisions, these can be done under a new President.

One who, unlike Bush, didn't begin a secret, illegal wiretapping months before September 11, 2001.

This is from the Denver Post. I wonder why I chose that one to read to the Presiding Officer, my good friend and colleague from Denver, CO. I suspect he may have seen this one himself, so I apologize if I am reading an editorial he has already probably read himself. This is dated June 5. ''Another Dose of Courage Needed on FISA'' is the title.

Congress once again is discussing a compromise on a long-stalled rewrite of the Foreign Intelligence Surveillance Act with the idea of getting something passed before its August recess.

The White House assuredly will play the national security card again as it seeks retroactive immunity for telecoms that give in to demands for information under the President's warrantless wiretapping program.

We hope Congress stands firm as it did in February. Frame it any way you want, but the issue is accountability.

Proponents are making a last-ditch effort—

The Denver Post says—

to squelch some 40 lawsuits that could bear witness to the breadth of Bush administration spying that took place outside the auspices of FISA.

Congress must not capitulate on this key point.

It's important to keep in mind how this country came to have FISA. Enacted in 1978, FISA was a response to widespread government abuse of wiretaps in the name of national security. The act set rules for government spying on foreign powers on their agents.

A secret FISA Court hears government eavesdropping requests and almost without exception approves them. The administration can even wiretap without a FISA warrant and get one later.

After the 9/11 attacks, President Bush decided to do an end run around the FISA Court, shifting approval for wiretaps from the judiciary to the executive branch. That program was secret until 2005 when the New York Times exposed its existence.

As I pointed out earlier, conceivably it would still be operating today but for that revealing by the whistleblower.

Last year, the administration employed fear mongering and convinced Congress—

The Denver Post says—

to legitimize the program through the Protect America Act, a temporary provision that expired this year.

The battle now is over a permanent extension, the centerpiece of which would be lawsuit immunity for the telecommunication companies that cooperated with the warrantless spying program.

Administration officials say they are very concerned about getting cooperation from the communications companies unless the companies have immunity.

We find it hard to believe that these telecoms would refuse to comply with the FISA Court order. FISA has been in operation for 30 years and that seems to have not been a problem in the past.

Let me just cut in here and point out that over the past 25 years, as I noted earlier, the FISA Courts have compelled companies to provide information and simultaneously granted them immunity when doing so. So this idea that we hope they will willingly cooperate—the courts have the power to compel cooperation when we want surveillance of individuals that could be doing us harm. So the argument that if we don't grant immunity they might not show up again when we ask them to provide surveillance that we need in order to guarantee our security—we hope they will cooperate, but if they don't, we have the ability to compel cooperation.

Back to the editorial. It concludes by saying:

It's also important to keep in mind that the Federal courts where these telecom lawsuits are being heard can—and have—dismissed some actions on the grounds that they could endanger national security. So it's not as if there is no protection at work.

The last time immunity was debated in Congress, House Democrats held firm, saying that they thought the administration's modifications would amount to a suspension of the Constitution. We hope they have the same courage of their convictions this time around.

I applaud the Denver Post for its brilliant and thoughtful editorial in that regard.

This is an editorial from the Register-Guard in Eugene, OR, so we get the breadth of this across the country. This one is entitled ''Sinking the Boat: House Approves Flawed Electronic Surveillance Bill,'' June 24, 2008.

Congressional leaders have crafted a deeply flawed bill on electronic eavesdropping, caving once again to White House warnings that failure to give the executive branch broad license to spy on U.S. citizens without a warrant would make it harder to protect Americans from terrorists.

In one of the most disappointing votes of the 110th Congress, the House on Friday approved a compromise over a contentious intelligence surveillance bill. The House measure would allow the Federal Government to intercept international telephone calls or e-mails without prior court approval if the executive branch claims it is necessary in an emergency. It would also grant de facto immunity to telecommunications companies that cooperated in the administration's secret and blatantly unconstitutional surveillance program after the September 11 attacks.

Congressman Peter DeFazio deserves credit for voting, along with 127 other Democrats, against the House bill. ''We do not trample over the U.S. Constitution in order to protect Americans from terrorism—that is akin to sinking the boat so the enemy can't sink it,'' the Oregon Democrat said.

After September 11, President Bush authorized the National Security Agency to monitor, without the prior court approval required by the Constitution, e-mails and phone conversations between suspected terrorists of United States residents. Called the Terrorist Surveillance Program, the initiative ignored the 1978 Foreign Intelligence Surveillance Act which required a special Federal court to authorize electronic spying on Americans.

The editorial goes on to say:

The Bush administration grudgingly accepted judicial oversight of the program only after its existence was leaked to the media and Congress howled in outrage. That outrage has since been muffled by a White House campaign intended to scare Americans and to allow the administration to further expand the chief executive's powers and erode civil liberties. And, oh, yes, to ensure that no one is held accountable for the illegal wiretapping that Bush ordered after September 11.

The House bill is a modest improvement over the earlier versions. While it unwisely allows the administration to authorize monitoring of international calls or e-mails, it requires the secret Foreign Intelligence Surveillance Court to review and enforce protections for U.S. residents, and it bars surveillance until those procedures are approved except in ''exigent circumstances.''

The Senate should improve the House bill by requiring court supervision of any surveillance that can involve American citizens or others in the United States. That's a constitutional red line the Bush administration—or any other—should not be allowed to cross.

The Senate should also make certain that the courts are allowed to decide whether telecommunication companies violated the

law by handing over data to the government over the past five years without a court order. The Senate should also demand a full accounting to Congress of all surveillance conducted since September 11—accounting the White House has refused to provide, telling lawmakers and the American public to instead ''trust us'' with their freedoms.

Congress still has a chance to make certain that the Federal Government Surveillance Program complies with the rule of law. History would suggest the failure to do so could leave the door open to lawless behavior as long as the current President remains in office—

And, I would argue, set a precedent for future administrations where that could occur as well.

Again, let me suggest here that what we are talking about is not the choice between security and liberty. This is not an issue that ought to divide people based on our party affiliation or how one is characterized and where they sit in the political spectrum. This is an issue that goes to the heart of who we are. It is talking about the rule of law and the Constitution. Everyone here takes an oath of office to protect and defend our country and to protect the Constitution. Certainly that is what this ought to involve.

Are the courts going to make a determination about the legality of this effort? Again, I don't know of another instance in our Nation's history where for 5 long years, 17 companies were allowed to virtually sweep up every phone call, every e-mail, every fax, every text message that was sent by every citizen of this country, and that is exactly what happened and would still be ongoing if it hadn't been revealed.

Do we require that there be some justification as to whether this was legally occurring? That ought not to be a matter of political choice. That ought to be a matter for the courts. That is why we established the third branch of government—the judiciary—to determine the constitutionality and legality of actions taken by the executive or legislative branches. We are shortcutting in the legislative branch, at the request of the executive, the ability of that branch to make that determination. We are sanctioning, in effect. We are closing the door, never to know why this happened, who ordered it, why did they avoid FISA, what was behind their thinking. That is a dangerous step for us to take.

That is the only case I am making. I have my doubts, as I said, about the legality of it, but that is just one Senator. I have the right to certainly have my doubts about certain actions. I don't have the right to determine the legality of it. I am a Senator, I am not a Federal judge. I don't sit in that third branch, I sit in the second branch. I sit in the Congress of the United States. It is my job here to stand up and see to it that we don't take actions that would deprive that branch—the legal branch, the judicial branch—from asserting its rights under our Constitution—exactly what the Founders intended.

So while I know there are those who are going to argue and make the case that those of us who stand up here to defend the rule of law, somehow we are weak-kneed when it comes to terrorism, that is hardly the case. I don't want to give terrorists a greater victory. As profoundly sad, as tragic, and as violent as the attack was on 9/11 that destroyed so much and showed us how dangerous the world is today, to grant them the power—those terrorists—to allow them to deprive us of our liberties is to grant them a victory even greater than they achieved that day. It must be our common determination to see to it that we stand up and not allow these rights and these liberties we enjoy as citizens to be eroded at our own hand.

Let's say to terrorists around the world: We will fight you and defeat you as you try to do us and others great harm, but you will not bring down the pillars of our constitutional form of government and the rule of law. That is what this is all about, while it is argued and we are told that we have to do this and if we don't do it, that somehow we are succumbing to those terrorists who wish to do us great physical harm.

Let me, if I can, sort of wrap up because I know I am taking a little bit of time. I want to leave some time to argue my housing bill. I am consuming the time on my housing bill to do this, but I want people to understand, at least from my perspective, why this is a dangerous conclusion, why we ought to vote against cloture, and why I am going to use my power as a Senator to object to going to that cloture vote, at least as long as a cloture vote exists on dealing with the housing legislation.

I think retroactive immunity is a disgrace. In the last months, I believe we proved that beyond any doubt whatsoever. As I said, I believe it is more disgraceful in all that it represents. It is the mindset that the Church Committee summed up so eloquently three decades ago. As I read these words—they are no longer with us. A lot of these Members have long since left us, not only from this Chamber but who have since passed away. But it is worthwhile for us to read their words, these Democrats and Republicans. There were those who suggested somehow they were weak-kneed when it came to giving the President the power to protect our national security. But listen to their words of three decades ago:

The view that the traditional American principles of justice and fair play have no place in our struggle against the enemies of freedom, that view created the Nixonian secrecy of the 1970s.

The Church committee wrote those words in part as a rebuke to our predecessors in this Chamber who for years allowed secrecy and executive abuses to slide. But today those words take on new meaning. Today, they rebuke us, in a way. Today they shame us for a lack of faith that we can, at the same time, keep our country safe and our Constitution whole.

As I said before, when the 21st century version of the Church committee convenes to investigate the abuses of the past years, how will we be judged? When it reads through the records of our debates—not if, Mr. President, but when—what will they find? When the President asked us to repudiate the Geneva Conventions and strip away the rights of habeas corpus, how did we respond? What was our Congress? What did we say about that? When stories of secret prisons and outsourced torture became impossible to deny, what did that Congress do in 2008 and 2007? In June of 2008 when we were asked to put corporations explicitly outside the law and accept at face value the argument that some are literally too rich to be sued, how did that Congress, how did that Senate vote on that matter?

All of these questions are coming to us, Mr. President. All of them and more. And in the quiet of his or her own conscience, each Senator knows what the answers are.

Remember, this is about more than a few telephone calls, a few companies, or a few lawsuits. If the supporters of retroactive immunity keep this argument a technical one, they will win. A technical argument obscures the defining question: the rule of law or the rule of men? That question never goes away. As long as there are free societies, generations of leaders will struggle mightily to answer it. Each generation must ascertain an answer for itself. Just because our Founders answered it correctly doesn't mean we are bound by their choice. In that, as in all decisions, we are entirely free.

The burden falls not on history but on each one of us—the 100 of us who serve in this remarkable Chamber. But we can take counsel, listen to those who came before us, who made the right choice even when our Nation's survival was at risk. They knew the rule of law was far more rooted in our character than any one man's lawlessness. From the beginning, they advised us to fight that lawlessness whenever we found it. At the Constitutional Convention, James Madison said:

The means of defense against foreign danger historically have become the instruments of tyranny at home.

He also said:

I believe there are more instances of the abridgement of the freedom of the people by gradual and silent encroachments of those in power than by violent and sudden assertion.

As long as we are temporary custodians of the Constitution, as we are, we have a duty to guard against those gradual and silent encroachments. That is exactly what this is. It is a gradual and silent encroachment. It doesn't come in a burst, it comes slowly. Our Founders knew these threats were coming. They could predict, persuade, and warn, but when it comes time to stand up against those threats in our own time, they cannot act for us. They can only teach us, they

can warn us, they can remind us that they would come. And they have. They are here. They are before us. They cannot act for us. The choice is ours and ours alone.

Tomorrow or the following day, when we are asked to vote on this, the choice will be ours. We have been warned and cautioned by history. The decision now rests with each and every one of us to decide whether we have listened to them and not only answer them but provide the answer for generations to come, as generations before us have answered that question. May we rise to that moment, Mr. President, and defeat this legislation. May we reject this retroactive immunity for a handful of companies so that we may determine whether their actions were legal or whether they were above the law or whether they were the rule of law or the rule of men. That is the important choice we will have to make.

I yield the floor.

COMMEMORATING THE 44TH ANNIVERSARY OF THE DEATHS OF CIVIL RIGHTS WORKERS ANDREW GOODMAN, JAMES CHANEY, AND MICHAEL SCHWERNER

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 600, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 600) commemorating the 44th anniversary of the deaths of civil rights workers Andrew Goodman, James Chaney, and Michael Schwerner in Philadelphia, Mississippi, while working in the name of American democracy to register voters and secure civil rights during the summer of 1964, which has become known as ''Freedom Summer.''

There being no objection, the Senate proceeded to consider the resolution.

Mr. LEAHY. Mr. President, our Nation owes a tremendous debt of gratitude to all of those who risked their lives in the pursuit of making America a more perfect union. This week, we commemorate the 44th anniversary of the day three brave civil rights workers—James Chaney, Michael Schwerner, and Andrew Goodman—paid the ultimate price in the struggle to secure civil rights and expand our democracy for all Americans.

On June 21, 1964, these three young men were abducted, brutally beaten, and shot to death by Ku Klux Klansmen for simply attempting to register African-Americans voters. Their deaths touched the conscience of our country and inspired events that changed the course of our history. The public outcry over the initial disappearance of these workers drew national and international attention to the violence associated with efforts to register African-American voters. It spurred efforts to desegregate the voting delegates at political party conventions. And it served as a catalyst for Congress to pass the Civil Rights Act of 1964 and the Voting Rights Act of 1965, key legislation that would eliminate segregation and usher in a new era of equal opportunity and access to our democracy for all Americans.

Unfortunately, our march toward equal justice under law is not yet complete. Three years ago, Edgar Ray Killen was convicted for the deaths of the three civil rights workers we honor today. Almost two dozen other men were involved in this crime; some are still alive, yet, none have ever been held charged with this murder. Even more troubling, the families of hundreds of other Americans who lost their lives in the fight for equal rights still await justice.

As we pass this resolution, we must recognize that it is long past time to pass the Emmett Till Unsolved Civil Rights Crime Act, which would strengthen our ability to track down those whose violent acts during a period of national turmoil remain unpunished. Last year, the House overwhelmingly passed this bill. Yet, one lone Republican Senator has prevented this important bill from passing. As we commemorate the deaths of three of the most celebrated civil rights activists of the past, let us remember this does not obviate our need to solve the hundreds of less recognized civil rights crimes of that era.

Today's resolution is an important gesture for us to remember the civil rights misdeeds of the past. But it is also an opportunity for Congress to show the country that we will not tolerate similar offenses. As we pass this resolution, it is fitting to carry this principle to the present and act in kind to prevent hate crimes and civil rights abuses occurring now in this country and around the world.

The powerful inscription on the grave of James Chaney reads: ''There are those who are alive, yet will never live; there are those who are dead, yet will live forever; great deeds inspire and encourage the living.'' By remembering Mr. Chaney, Mr. Schwerner, and Mr. Goodman today, I hope we all can be inspired to renewed action in this Congress. Let us pass the Till bill to ensure that those who sacrificed their lives in pursuit of justice are not forgotten and the perpetrators of these crimes are held accountable.

Mr. DODD. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to the resolution be printed in the RECORD.

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

The resolution (S. Res. 600) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 600

Whereas 44 years ago, on June 21, 1964, Andrew Goodman, James Chaney, and Michael Schwerner were murdered in Philadelphia, Mississippi, while working in the name of American democracy to register voters and secure civil rights during the summer of 1964, which has become known as ''Freedom Summer'';

Whereas Andrew Goodman was a 20-year-old White anthropology major at New York's Queens College, who volunteered for the ''Freedom Summer'' project;

Whereas James Chaney, from Meridian, Mississippi, was a 21-year-old African-American civil rights activist who joined the Congress of Racial Equality (CORE) in 1963 to work on voter education and registration;

Whereas Michael ''Mickey'' Schwerner, from Brooklyn, New York, was a 24-year-old White CORE field secretary in Mississippi and a veteran of the civil rights movement;

Whereas in 1964, Mississippi had a Black voting-age population of 450,000, but only 16,000 Blacks were registered to vote;

Whereas most Black voters were disenfranchised by law or practice in Mississippi;

Whereas in 1964, Andrew Goodman, James Chaney, and Michael Schwerner volunteered to work as part of the ''Freedom Summer'' project that involved several civil rights organizations, including the Mississippi State chapter of the National Association for the Advancement of Colored People, the Southern Christian Leadership Conference, the Student Nonviolent Coordinating Committee, and CORE, with the purpose of registering Black voters in Mississippi;

Whereas on the morning of June 21, 1964, the 3 men left the CORE office in Meridian and set out for Longdale, Mississippi, where they were to investigate the recent burning of the Mount Zion Methodist Church, a Black church that had been functioning as a Freedom School for education and voter registration;

Whereas on their way back to Meridian, James Chaney, Andrew Goodman, and Michael Schwerner were detained and later arrested and taken to the Philadelphia, Mississippi, jail;

Whereas later that same evening, on June 21, 1964, they were taken from the jail, turned over to the Ku Klux Klan, and beaten, shot, and killed;

Whereas 2 days later, their burnt, charred, and gutted blue Ford station wagon was pulled from the Bogue Chitto Creek, just outside Philadelphia, Mississippi;

Whereas the national uproar caused by the disappearance of the civil rights workers led President Lyndon B. Johnson to order Secretary of Defense Robert McNamara to send 200 active duty Navy sailors to search the swamps and fields in the area for the bodies of the 3 civil rights workers, and Attorney General Robert F. Kennedy to order his Federal Bureau of Investigation (FBI) director, J. Edgar Hoover, to send 150 agents to Mississippi to work on the case;

Whereas the FBI investigation led to the discovery of the bodies of several other African-Americans from Mississippi, whose disappearances over the previous several years had not attracted attention outside their local communities;

Whereas the bodies of Andrew Goodman, James Chaney, and Michael Schwerner, beaten and shot, were found on August 4, 1964, buried under a mound of dirt;

Whereas on December 4, 1964, 21 White Mississippians from Philadelphia, Mississippi, including the sheriff and his deputy, were arrested, and the Department of Justice charged them with conspiring to deprive Andrew Goodman, James Chaney, and Michael