So you have a long history of ineptitude—total ineptitude—by the Congress and more than ineptitude by the Congress, complicity in passing the Military Commissions Act and facilitating a free hand by the administration in changing the legislation on habeas corpus. That should not have had an impact on the ultimate result because habeas corpus is a constitutional right, and the Supreme Court finally got around to saying so when confronted with the totally insufficient procedures on the combat status review board. So we have another chance when the FISA legislation comes up. We have a lot of guidance, from what Chief Judge Walker has had to say.

It is understandable that the Congress continues to support law enforcement powers because of the continuing terrorist threat. No one wants to be blamed for another 9/11. My own briefings on the telephone companies' cooperation with the Government—and I speak in terms only of reports and allegations because it is not a matter of record—my own briefings on the telephone companies' cooperation with the Government have convinced me of the program's value, so that I voted for it, even though my amendment to substitute the Government for the telephone companies was defeated in the Senate's February vote. Similarly, I am prepared to support it again as a last resort, even if it cannot be improved by providing for judicial review.

However, since Congress has been so ineffective in providing a check and balance, I will fight hard this week—starting today with this speech—to secure passage of an amendment to keep the courts open. When the stakes are high, as they invariably are when Congress addresses civil liberties and national security, Members frequently must choose between the lesser of two imperfect options. Unfortunately, we too often back ourselves into these corners by deferring legislation until there is a looming deadline or a congressional recess. Perhaps that is why so many of my colleagues have resigned themselves to accept the current bill without seeking to improve it.

I ask my colleagues to look to Judge Walker's opinions as guidance as to what we ought to be doing to back him up on what he has done, in a courageous way, in taking the bull by the horns and declaring the terrorist surveillance program unconstitutional and setting the path for standing.

Although I am prepared to stomach the bill if I must, I am not ready to concede that the debate is over. Contrary to the conventional wisdom, I don't believe it is too late to make this bill better. Perhaps the Fourth of July holiday will inspire the Senate to exercise its independence from the executive branch now that we have returned to Washington.

I thank the Chair and my distinguished colleague from North Dakota for his patience—if he has any. Senator DORGAN customarily does.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, I wish to speak in morning business, and I ask unanimous consent to use the remaining time in morning business.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

ENERGY

Mr. DORGAN. Mr. President, I wish to speak about the issue of energy. I understand the urgency of the need to get our energy policies right. We have a very serious problem, I think, in a range of areas. Energy policy is something that affects everybody. They pull up to the gas pump to fill their tanks and wonder how they are going to be able to afford it. If you try to run an airline, you try to stop the hemorrhaging of red ink because of the enormous cost of jet fuel. If you have a trucking company, you are trying to avoid going bankrupt because of the cost of diesel fuel. If you have a family farm, you are trying to get the money together to fill your fuel tanks for the summer and fall harvests.

There is so much that is damaging our economy, as the price of gasoline has gone to $4-plus a gallon and the price of oil is bouncing around $140 a barrel. I wish to talk about that. I understand, as a Member of this body, that old saying is that ''when all is said and done, more is said than done.'' I understand how people feel about that. Democracy is painfully slow and, yet, in this case, we face something that is urgent and needs, I think, some haste and speed. I know there are others who look at the legislative bodies, or politics generally, and see windbags in blue suits, and they think there is a lot of discussion and precious little action. I will talk a bit about this issue of the need for action.

We get up in the morning and we, generally speaking, reach for a switch and turn it on and there is light. We might—those of us who need to—plug in an electric razor and shave in the morning. We might decide to have breakfast and turn on a stove and fry some eggs. We could go out to the car and put a key into the ignition and start the engine. There are so many different things we do every single moment of the day that we don't think about, but it represents the consumption of energy—an unbelievable amount of energy, in the form of oil, natural gas, electricity, and coal.

Now, let me describe for a moment where we find ourselves. This great country of ours—and there is nothing like it on the face of the Earth—has an unbelievable appetite for oil. Sixty to seventy percent of our oil comes from outside our country. We stick straws in the Earth and suck out oil from the planet every day. We suck 85 million barrels a day out of the planet Earth, and 21 million, or one-fourth, is destined to be used in the United States of America. That describes to you how much of an appetite we have for oil.

We use a substantial amount of the Earth's oil. Seventy percent of the oil that we use is used in vehicles. So that consumes a substantial amount of our oil.

The runup in price has had such a dramatic impact on this economy and on American families. I want to describe a bit about that today.

Some would say the price of oil has increased because it is supply and demand. Right? Greater demand, less supply; therefore, a higher price. But that is not true. I would like someone to name for me one thing that has happened in the past year with respect to supply and demand that justifies a doubling of the price of oil. You can't do it. I will stand here for 3 days. You can't do it. Nothing has happened in the last year with respect to supply and demand that justifies doubling the price of oil. If anything, exactly the opposite should have been the case. We are using less fuel in the United States right now than we did in the equivalent period a year ago. We drove about 5 billion fewer miles. That means demand is down. Supply is up.

The closing month inventory of crude oil for the first 5 months of this year has supplies increasing. If supplies are increasing and demand is down, what should happen to price? It should go down. But the fact is, the price has gone up like a Roman candle, just up, up, straight up.

As I have indicated, the OPEC countries are blissfully happy going to the bank to deposit our money in their bank accounts. The big oil companies have a permanent grin. They love depositing our money into their bank accounts. Everybody loves it except the consumer who is paying through the nose for gasoline—$4, $4.50 a gallon for regular gasoline.

There are a lot of things that need to be done in energy. We need to produce more, yes. We need to conserve more, certainly. We need more efficiency in all the appliances we use. We certainly do that. And we ought to have a national commitment toward renewable energy sources. We ought to do that, all of that.

I support drilling offshore. I am one of four Senators who helped open what is now lease 181 in the Gulf of Mexico. That is now open, and that is good. Hurricane Katrina came through the gulf—we are never going to have a bigger wind than that through the gulf—and those offshore platforms withstood. There was no oil leakage in the gulf as a result of that hurricane.

We can get those resources, in my judgment. Some say the hood ornament is ANWR. We have to drill in ANWR in Alaska. It is one of the few pristine areas put away for future generations in legislation signed by Dwight Eisenhower.

In any event, that is not where the major oil deposits are. The major deposits are in the Gulf of Mexico, and we ought to drill more there. I support that. We ought to conserve more, much more. That includes more fuel-efficient vehicles. In fact, we did that, the first time in 27 years we required a 10-miles-per-gallon increase in the efficiency of vehicles in 10 years.

There is so much we can and should do to solve this problem. But what has happened in the last year with respect to energy prices is, in my judgment, largely unconnected to what I just described. Let me tell you what I think is happening.

There is an unbelievable amount of speculation in the oil futures market. Let me describe it. This is the growth of speculation in the oil futures market. In the year 2000, 37 percent of the trades in the oil futures market was by speculators. Today it is 71 percent. That market has largely been taken over by speculators or, as Will Rogers described 80 years ago, people buying things they will never get from people who never had it and, by the way, buying it with money they never had. This is an unbelievable amount of excess speculation driving up prices.

This morning in the Washington Post there was a well-written story by a journalist named David Cho. The story was: ''Pension Funds Boosted By Oil: While Stocks Fall, Commodity Bets Are Paying Off.''

This was a story about CalPERS and other pension funds moving billions and billions of dollars into the futures market. In fact, investors, including pension funds and Wall Street speculators, have increased their investments in the futures market from $13 billion in 2003 to $260 billion today. Think of that. From 2003 to 2008, you go from $13 billion to $260 billion moving into this marketplace, which is not a particularly large marketplace. We produce 85 million barrels a day coming out of the Earth, and we trade 22 times that amount every single day. We have these dramatic amounts of additional speculation, especially by pension funds coming into this marketplace. Then we have brain-dead people walking around saying: What speculation? We don't think there is any excess speculation. This is simply the market working. Nonsense. That is unbelievable nonsense.

The article says:

For decades, trading commodity contracts was considered taboo by most pension funds because the market is so volatile and risky.

All of the sudden risk doesn't matter so much, I guess. Just jump in with both feet right smack into the oil futures market, grab a bunch of it, and see what happens. I don't understand that. Where do we find all the cards with which to build this house of cards?

Walter Lukken, acting chairman of the Commodity Futures Trading Commission—

By the way, they are the regulators. They are the referees, the ones wearing the striped shirts carrying the whistles and supposed to call the fouls—

Walter Lukken, acting chairman of the Commodity Futures Trading Commission, said the price of oil and other goods is going up simply because demand is outstripping supply. ''It's our proposition that strong fundamentals are at play, driving higher commodity prices across the board.''

That is our regulator saying: What, we worry? I don't see anything happening.

Let me remind everyone again of the amount of speculation that has gone up in 5 years. This market was 37 percent speculators. It is now 71 percent speculators. That is a study that was done by the House Subcommittee on Oversight and Investigations. So the head of the regulatory authority says: You know what. I don't think anything is going on. I am blissfully happy here, going to work in the mornings, and I am perfectly willing not to see what exists.

Let me describe a chart I think is one of the most interesting charts with respect to oil prices. I put this chart together to show the Energy Information Agency—we spend $100 million on this agency. They are an agency that is not about policy. They are to give us information on energy and give us their best judgments on energy prices, among other things. Here is what they have said.

The yellow line shows the following: In May of last year, they said: Here is where we think the price of oil is going to go. And in July, they said: It is going to be higher than that. Here is where we think it is going to go, up to 2009. Then in September, they made another estimate a little higher: Here is where we think it is going to go. Last November: Here is where we think the price of oil is going to go in the next year. January: Here is where we think it is going to go.

Can you imagine that? This is the best agency we have, the Energy Information Administration, with which to make judgments, and how did they make judgments that were so unbelievably wrong? I had the head of this agency before my subcommittee the week before we left for the recess. He couldn't answer the question. This must be an embarrassing chart for the smartest guys in the room.

I said: Let me answer it for you. If you can't answer it, let me answer it for you. I taught economics in college ever so briefly but enough so I think I can answer this chart.

The reason our agency has been wrong, so consistently wrong all the time every time they made an estimate—here is where the price of oil is going to go, instead it went like this, straight up—is because this market has been taken over not by supply-and-demand relationships but by speculators. They are up to their necks deep in speculation. So this line, the red line, could not possibly be determined by an agency that is looking at supply-and-demand fundamentals because this does not relate to anything except an orgy of speculation by people who want to get into the market and make big bucks so we deposit our money into their bank accounts.

The senior vice president of ExxonMobil in April said the price of oil should be about $50 or $55 a barrel. I suppose he is looking at things such as supply and demand.

Fadel Gheit came to the Congress—this guy worked for 30, 35 years for Oppenheimer Company. He was their resident expert on energy. Here is what he said:

There is no shortage of oil on the world market today. I'm convinced that oil prices shouldn't be a dime above $55 a barrel. I call it the world's largest gambling hall, open 24/7. Unfortunately, it's totally unregulated. This is like a highway with no cops, no speed limit, and everybody going 120 miles an hour.

Then the Energy Secretary, a man I like, a good guy, said:

There is no evidence that we can find that speculators are driving the futures prices for oil.

This apparently is the new master narrative. Just say nothing is happening and then hope nobody can discover something that is happening.

The problem is, every hour of every day the American people drive up to the gas pumps and discover what politicians—at least some of them—are insisting doesn't exist. It is unbelievable to me.

In every circumstance where there has been dramatic excess speculation in the market and the market becomes broken, it is the responsibility of the Congress to set it right.

I have introduced legislation, and there are half a dozen pieces of legislation around here to try to address this issue.

I understand we will have discussions all of July about this situation, and I understand the inclination, perhaps, by some will be to decide we ought to do something without teeth. If we can just do something and say we did something and it has no grip or bite, we can all go home, thumb our suspenders, and even puff on a cigar for those who smoke, and say: We did it, the United States Senate, good for us. It is not good for us unless it is something that has an impact on a market that is broken. Let me describe the legislation I introduced. It is called the End Oil Speculation Act of 2008. That describes exactly what it would do. It requires the regulator, the Commodity Futures Trading Commission, to separate trades in the futures market for oil. One set of trades would be trades between consumers and producers of a physical product for the purpose of hedging risk. That is precisely what the market was established to do. That is exactly what the market is about. It is why we have a futures market. A futures market is necessary and is there because it is needed to hedge risks of a physical commodity.

We would require the Commodity Futures Trading Commission to separate those trades. Other trades then are defined as speculative trades, and a 25-percent margin requirement would be applied to those non-legitimate hedge trades. Why that? The fact is, if you are going to speculate in stocks on margin, you have to put up 50 percent of the money. If you want to control oil on margin, put up 5 percent or 7 percent maximum. Let's quintuple that to 25 percent and see if we can wring the speculators out of this market. If you are engaged to speculate on one side or another of a legitimate hedge for the trading of a physical commodity, as far as I am concerned, that is what the market is about. You should not be subject to this new requirement. But if you are just out there trying to figure out how to play bingo with this oil market, despite the fact you do not even know what oil looks like, you couldn't lift a 5-gallon can if your life depended on it, don't want to see oil, don't want to store it, you have no interest in oil—what you are interested in is making money, then this increased margin requirement should apply to you.

We have hedge funds and investment banks that are up to their necks in these markets. They have no interest in oil. We have hedge funds for the first time in history buying oil storage in order to buy it, take it off the market, store it, so that it becomes more valuable later, and they sell it and make a profit. The problem with all of this is the country's economy is being damaged, and we have a responsibility, I believe, to try to fix these kinds of problems when they exist.

I know that we will have a discussion this week and this month about four or five different approaches. And I know they will all have great labels. When I grew up, my neighbor, Herman, an old man—he had rheumatism, he wore suspenders and never traveled much off his front porch. And he had a dog. His dog was a three-legged, one-eyed dog with fleas. He called him Lucky. I thought: That name doesn't fit a three-legged dog with one eye with fleas. But Lucky actually answered to the call of ''Lucky.''

We do that with legislation around here, some of us. I shouldn't say ''us'' because I try not to do it. They package legislation and label it as if it is going to do something.

The only issue at the end of the day in the Senate in terms of dealing with this energy urgency—and I believe it is urgent—the only issue is have we done something that has some bite and grip and starts to fix a market that is broken? Have we decided to wring some of this speculation out of this market and put energy prices back where they ought to be?

Let me point out once more that, according to the House Subcommittee on Oversight and Investigations, who did an evaluation of this, 71 percent of the trades in the oil futures market is now speculative—pure speculation—as opposed to the non-speculators who are using that market for the purposes which it was intended. I say to all those who say: You know, speculation—what speculation? I see nothing, hear nothing, know nothing. Well, I say: Look at this EIA chart again and try to figure out what this line means. Most Americans understand exactly what this line means. It is what they have to pay at the pump every time they take the gas cap off their tank. And they know where it is going. A fair amount of that is going to OPEC.

By the way, enough of that spills from the barrel to fund some terrorism. In addition to all that, a substantial amount is going to the major integrated oil companies. I might observe here that some say: Well, that is important, because they need to invest in additional exploration. The largest oil company in this country spent twice as much last year buying back its stock as it did drilling for oil. That is all you need to know about that.

The American people need this Congress to address this issue now, in the month of July. This country's economy is in substantial difficulty for a lot of reasons. We have a lot of speculation, a lot of risk created in a whole range of areas.

Take a look at the subprime loan scandal. Evaluate what has happened as a result of the collapse of home values and the subprime loan scandal—all these issues together—and what it has done to our economy. And put on top of that this dramatic runup in energy prices, and on top of that look at the President's budget where he says: Oh, by the way, I want you to pass a budget that has a $420 billion deficit.

Except that is not what the deficit is. The deficit is not what the President says it is. It is how much the President says we have to borrow to keep the Government going this year, which is over $700 billion. We have a fiscal policy off the trail, with $700 billion a year, and we will borrow $800 billion because of our trade policy this year, due to trade deficits. So $700 billion, $800 billion, and that is $1.5 trillion in 1 year of red ink, with a $14 trillion economy. That is slightly more than 10 percent of this entire economy's value represented by red ink. That is unsustainable. It doesn't work.

Look, I am an optimist. I believe we can fix all this. I believe we can put this country back on track, with a sound fiscal policy that says let's pay for that which we use. If we are going to spend money, let's pay for it. We can say if we are going to send soldiers to war, we can at least ask the American people to pay for the cost of the war. We can decide to crack down on oil speculators, and mortgage sharks who are peddling bad mortgages around the country. In all cases, whether it is the oil futures market or whether it is the financial area, it requires regulators who are not brain dead and who are willing to come to town to have effective regulation and make sure that markets work.

I believe we can fix all of these things, but we don't have a lot of time. This economy, I think, is a fragile economy. It is strong and resilient. But you lay these four things on top of it, and it becomes a fragile situation that requires action by us. I know that because I was in North Dakota all of this past week.

I saw a letter to the editor today saying: Well, the problem with all of this is the Democrats. The Democrats are causing all this. That is such sheer nonsense. Going back to 2001—talking about oil, the subprime mortgage scandal, and others—we had regulators coming to town who said: You know, we don't even like Government, and we would love to be a regulator to say we are not very interested in regulating. In fact, we don't need to put on a striped shirt. We don't have a whistle. We want to come here and say things are going to be better. We won't look.

I chaired the hearings in the Commerce Committee on the Enron scandal. I had Ken Lay come in front of my committee, raise his hand and take the oath, and then take the fifth amendment. He is now dead, but there are a number of those he worked with who are now in prison, because part of that was a criminal enterprise and the regulators weren't willing to look. Now, I am not alleging that is the case with the futures market, but I am alleging this market is broken and causing dramatic injury to every American family. This country's economy and the American people can and should expect us to take action.

My hope is that in the coming week or two we can pass some legislation. I hope that legislation will closely resemble the End Oil Speculation Act, in which we require the regulatory body to use its existing authority to do two things: Separate the legitimate hedging that occurs, and should occur in this marketplace, from excess speculation, and then wring out the excess speculation in order to begin to put some downward pressure on prices.

The American people deserve the right to expect that from their Government. I hope my colleagues and I can overcome what has been for too long in this Chamber a dramatic amount of stalling and obfuscation by those who dig their heels in and don't want to make any progress on anything. So my hope is that perhaps in the coming month we will be able to make some progress.

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

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

The legislative clerk proceeded to call the roll.

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

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