

taught at San Francisco's State University for almost three decades, developing, during that time, his credentials as a commentator on world affairs.

TOM LANTOS brought to the House his passionate patriotism and the drive of a survivor. When people would comment on the demands of his work, which included regular travel to his constituency 3,000 miles away, his global travels as a Member of the House Foreign Affairs Committee, which he recently chaired, and the hectic pace of his other congressional assignments, he would be quick to remind us that this was nothing in comparison to what he had faced as a young man.

He founded the House Human Rights Caucus, a platform which he used to highlight the human rights abuses around the world, and with which he became inextricably associated. For many of us in Congress and for many oppressed through the world, Congressman LANTOS was the chairman for human rights.

He was a Democrat who believed in the use of American power for good and who understood the nuances of subtle, as well as confrontational, diplomacy.

For example, he kept trying to get a visa to visit Tehran because he believed there was always room to talk with enemies as well as friends. But when asked what he would say to the dictators in Tehran, he was less than subtle:

I will tell the Iranians the truth—that it's a great country and they need to be re-integrated into the family of civilized nations and that they must give up their lunatic notions.

Less than subtle, to be sure, but truthful. It is hard to disagree with this view, Mr. President.

TOM LANTOS also recognized that diplomacy could fail and the use of the U.S. military could achieve noble ends. He was a strong supporter of the military during the Cold War, supported military assistance to Israel, urged President Clinton to lead NATO forces against Milosevic's genocide, and supported our interventions in Iraq, although, to be fair to him, he was critical, as many of us have been, about the implementation of our invasion of Iraq.

The point is, TOM LANTOS represented the wing of the Democratic Party that kept central our national security concerns, that recognized our duty in the world, and accepted that the use of force is sometimes required. This is the wing of the Democratic Party that needs to survive if that party is to remain relevant to the events in the world that will continually shape us.

I am honored to have been a friend of TOM LANTOS for decades. We loved each other. We showed that love repeatedly over the years. He was a dear friend, and I want everybody to know just how deeply I felt about him. Our staffs worked together well, and he always had my admiration and respect.

I will never forget a tour he gave me and Senators REID and Daschle of the

old Jewish ghetto in Budapest when our separate codels happened to be in that city at the same time in 1996. Later, he gave us a personal tour of the magnificent Hungarian Parliament building. One of the first post-Communist governments was in power, and they so highly regarded TOM LANTOS for his heritage, as well as his anti-Communist stance throughout his life, that he was granted free access throughout the building. He even knew where to turn the lights on.

The prayers and thoughts of Elaine and I go out to Annette, his beautiful wife of 58 years, whom he married in California, but who, like himself, was a survivor of the Holocaust in Hungary and was actually a childhood sweetheart. The fact that they loved each other as long as they have, that they came from similar backgrounds, and worked together daily throughout their lives only makes her loss that much sadder.

Our condolences go out to her and their two wonderful children. And I believe there are 18 grandchildren. But the death of TOM LANTOS is a great loss, as well, to his constituents, to his colleagues in the House, to his party, and to all of us in Congress. It is a loss to our great Nation and to all those who strive in solidarity for the cause of human rights.

TOM LANTOS was slight of build, but he was a giant. He was a moral force who used the authority of a survivor from the Holocaust, of an American immigrant, and of a scholar and leader to show the great institution of Congress how it can lead in a dangerous and often immoral world.

Elaine and I loved TOM, we love Annette, and we hope we can be of some assistance to Annette and her family as we move into the future. But we will miss TOM very badly. What a great and noble man who suffered so much for freedom.

I thank the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

Mr. KYL. Mr. President, that was a very fine tribute from the Senator from Utah to a very fine man. I had the honor of serving with TOM LANTOS in the House of Representatives, and I certainly join all others who mourn his death today.

I wonder if I might ask the Senator from California—I think she would like to make a FISA presentation. I understand the Senator would like to have about an hour. Is that how long she plans to speak?

Mrs. FEINSTEIN. I thank the Senator. I would like to say a few words about TOM LANTOS, he was a friend, and also speak on two amendments on the Foreign Intelligence Surveillance Act.

Mr. KYL. I wonder if, in the spirit the Senator and I have frequently resolved matters, I have about 10 minutes of presentation. Perhaps if we can enter into an agreement, you proceed and make your comments about Representative LANTOS, I will speak for my

10 minutes or so, with the understanding that you then conclude the remainder of your remarks. We could propose that in the form of a unanimous consent agreement. Would that be acceptable?

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

The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I had the great pleasure of knowing TOM LANTOS as a friend and as a mentor. I have known him for many years. I last spoke with him about 3 weeks ago, maybe 4, and he said he was going to forego treatment, that he was ready for whatever would come, that he and Annette were going to remain in Washington, that he was very content with his medical treatment at Bethesda, and he did not believe he would try anything heroic.

Those of us who know, know cancer of the esophagus is devastating and unrelenting. From that point on, I began to think quite a bit about TOM LANTOS. I thought back when Yahoo had the confrontation with China and did not stand up but gave in to China, and TOM stood on his feet, with amazing blue eyes and his gray hair, and said: They are moral pygmies.

He called it as it was. He stood for human rights. After 30 years in the House, he became Chairman of the Foreign Relations Committee. Regretfully, his life ended before he had much more time than a year in that position.

TOM LANTOS represented the district directly to the south of my city, San Francisco. He was a wonderful Representative. I watched him over the past 30 years as time went on. I watched his 18 grandchildren grow. I remember meeting them in the airport in Denver. I do not know whether Members know this; some of them were home schooled, and they went to college at the age of 14. That is pretty amazing; all high achievers, all very close, a tight family; a wife who was his childhood sweetheart.

This does not often happen. But then if you think back to Hungary in those days, and you think back to a young, blue-eyed man in the camps, escaping at night, being caught, coming back, leaving again, becoming part of Raoul Wallenberg's group, coming to this country, becoming educated and all the greatness of the country opening before him.

He truly measured up to the greatness of America. I was very proud to call TOM LANTOS a friend and a mentor. He will be missed. He will be missed in his district, he will be missed in California, and he will be missed in the United States.

I yield the floor.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

FISA AMENDMENTS ACT OF 2007

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 2248, which the clerk will report.

The bill clerk read as follows:

A bill (S. 2248) to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

Pending:

Rockefeller-Bond amendment No. 3911, in the nature of a substitute.

Whitehouse amendment No. 3920 (to amendment No. 3911), to provide procedures for compliance reviews.

Feingold amendment No. 3979 (to amendment No. 3911), to provide safeguards for communications involving persons inside the United States.

Feingold-Dodd amendment No. 3912 (to amendment No. 3911), to modify the requirements for certifications made prior to the initiation of certain acquisitions.

Dodd amendment No. 3907 (to amendment No. 3911), to strike the provisions providing immunity from civil liability to electronic communication service providers for certain assistance provided to the Government.

Bond-Rockefeller modified amendment No. 3938 (to amendment No. 3911), to include prohibitions on the international proliferation of weapons of mass destruction in the Foreign Intelligence Surveillance Act of 1978.

Feinstein amendment No. 3910 (to amendment No. 3911), to provide a statement of the exclusive means by which electronic surveillance and interception of certain communications may be conducted.

Feinstein amendment No. 3919 (to amendment No. 3911), to provide for the review of certifications by the Foreign Intelligence Surveillance Court.

Specter-Whitehouse amendment No. 3927 (to amendment No. 3911), to provide for the substitution of the United States in certain civil actions.

Mr. KYL. Mr. President, today we are debating the amendments to the Foreign Intelligence Surveillance Act. I am going to say a few words about why Congress ought to provide legal relief to those private entities that have aided the United States in our war against al-Qaida and, in particular, one of the amendments that will be voted on tomorrow.

I begin by quoting a passage in an opinion by Justice Cardozo, from the time when he was the chief judge of the New York Court of Appeals. In the 1928 decision *Bagginton v. Yellow Taxi Corp.*, this is what Justice Cardozo had to say about the legal immunities that should be provided to private parties that assist law enforcement efforts:

The rule that private citizens acting in good faith to assist law enforcement are immune from suit ensures that the citizenry may be called upon to enforce the justice of the State, not faintly and with lagging steps, but honestly and bravely and with whatever implements and facilities are convenient and at hand.

We need to encourage citizen involvement in our efforts against al-Qaida. We know that good intelligence is the best way to win the war against those terrorists, and if we want to monitor al-Qaida, we need access to the information which is available through the telecommunications companies.

We asked them for help, and they provided that help at a critical time, after 9/11. We need to know, for example, whether al-Qaida terrorists are planning other attacks against us. When we ask parties to assist us, such as those telecommunications companies that assisted us after 9/11, we want them to reply not faintly and with lagging steps but, rather, in Justice Cardozo's words: We want them to answer the call honestly and bravely and with whatever implements and facilities are conveniently at hand.

In today's technological world, what that means is that when we ask these telecommunications companies for their support, they provide the incredibly intricate and advanced technology at their disposal to assist us in understanding what communications al-Qaida is having with each other.

Now, tomorrow we are going to be voting on some amendments which, in my view, weaken and in one case would actually strip the liability protections the Intelligence Committee bill provides to such private parties. I think these amendments are unwise.

Certainly, I urge my colleagues to reject them. Let me focus on one of them today, one that relates to a subject called substitution. The idea is that while it would be unfair to hold these telecommunications companies responsible for coming to the aid of the Government in its time of need, that they should be immune from liability, that we should somehow substitute the U.S. Government in their place and that would somehow balance the equities here of having the matter litigated and yet protecting the telecommunication companies.

There are several reasons why this simply does not work. In the first place, it would still be required to reveal the identity of the company involved. Part of this entire matter is protecting the identity of the company so it does not lose business around the world and so it is not subject to the kind of abuse that would otherwise occur.

In addition to that, full discovery could be conducted. In other words, depositions could be taken, interrogatories could be served. In every respect, the company is not protected from the legal process, it is simply not liable at the end of the day; it would only be the Government that would be liable.

But the individuals of the company and the company itself would still be subject to all the rigors of litigation which we are trying to protect them from. The litigation does not go away. In addition to that, a method has been set up to litigate this before the FISA Court, which misunderstands what the FISA Court is. The FISA Court is not like the Ninth Circuit Court of Appeals. The FISA Court is individual judges called upon primarily to issue warrants that permit the Government to engage in its intelligence operations.

So you do not have a court sitting the way you do in a typical Federal district court or a circuit court. This FISA Court would presumably have to litigate whether the companies are entitled to substitution, so it is not a free substantiation but, rather, if they can prove that they are entitled to the substitution.

Finally, the point of having this liability protection for the Government's purpose is first and foremost because of the need to protect its sources and methods of intelligence collection from the enemy or from the public at large. Of course, if you still have the litigation ongoing, if you still have the process, it is just that Party A is liable rather than Party B.

You still have the threat that sources and methods could be compromised, information relating to the activity could be disclosed, as it has in the current debate. We should remind ourselves that what we are debating publicly is a system of collection that has been, to some extent, defined by public discussion of matters that were and should have been totally classified.

We have given the enemy a great deal of information about how to avoid the kind of collection that is vital to our efforts. That is the kind of thing we are trying to prevent. So substitution, simply substituting the Government as a party for the phone companies does not solve that problem either. The bottom line is, that as with these other amendments, the so-called substitution amendment is not a good amendment, it should be rejected, and I hope at the end of the day we will have been able to vote it down.

Let me conclude by repeating some of the things the Statement of Administrative Policy stated in quoting the Intelligence Committee's conclusions in its report.

Al-Qaida has not ceased to exist in years since the September 11 attacks. It still exists and it still seeks the wholesale murder of American civilians. We know how devastating such attacks can be. And we know that once an attack is underway—once a plane has been hijacked, or a bomb has been assembled—it is too late. We need to stop al-Qaida attacks before they are executed, before they are being carried out. We need to act at a time when such attacks are still being planned or when al-Qaida terrorists are still being prepared.

To gather this type of intelligence—the intelligence needed to stop a terrorist attack—we will need the assistance of private parties. Information about al-Qaida's communications, its travel, and other activities often is in the hands of private parties. If we want to monitor al-Qaida we will need access to information. And when telecommunications companies or others are asked for their help in tracking, for example, an al-Qaida cell that may be operating in this country, we do not want those parties to reply "faintly and with lagging steps." Rather, in