

mess." This administration does not want a court to have the chance to look at this legal mess. Retroactive immunity would assure that they get their wish.

The Judiciary Committee and Intelligence Committee tried for well over a year and a half to obtain access to the information that our members needed to evaluate the administration's arguments for immunity. Indeed, over a year ago Chairman SPECTER was prepared to proceed to subpoena information from the telephone companies in light of the administration's stonewalling. It was only just before the Intelligence and Judiciary Committees' consideration of this bill that committee members finally obtained access to a limited number of these documents. Senators who have reviewed the information have drawn very different conclusions.

Now this matter is before all Senators and it is well past time for all Members to have access to the information they need to make informed judgments about the provisions of these bills. The majority leader wrote to the administration stating that Members of the Senate need that access. We have had no response—the administration has ignored the request. It is clear that they do not want to allow Senators to appropriately evaluate these documents and draw their own conclusions.

There are reports in the press that at least one telecommunications carrier refused to comply with the administration's request to cooperate with the warrantless wiretapping. All Senators should have the opportunity to know these facts, so they can make an informed judgment about whether there were legitimate legal concerns that other cooperating telecommunications companies should have raised. Indeed, if other carriers had been more careful in their legal analysis, and had raised these concerns, would the administration have had a greater incentive to come to the Congress and get the law changed? Would we have been spared five long years of illegal behavior by this administration?

I have drawn very different conclusions than Senator ROCKEFELLER about retroactive immunity. I agree with Senator SPECTER and many others that blanket retroactive immunity, which would end ongoing lawsuits by legislative fiat, undermines accountability. Senator SPECTER has been working diligently first as the chairman of the Judiciary Committee and now as its ranking member to obtain judicial review of the legality of the warrantless wiretapping of Americans from 2001 into last year. The check and balance the judiciary provides in our constitutional democracy has an important role to play and should be protected. Judicial review can and should provide a measure of accountability.

We hear from the administration and some of our colleagues that we must grant immunity or the telephone com-

panies will no longer cooperate with the Government. Senators should understand that even if we do not grant retroactive immunity, telecommunications carriers will still have immunity for actions they take in the future. Their cooperation in the future will still be required by legal orders and they will not be subject to liability for doing what the law requires. If they follow the law, they have immunity.

We have heard some people argue that the telephone companies should get immunity because they complied with the Government's requests to engage in warrantless surveillance out of patriotism. I do not doubt the patriotism of the executives and employees of these companies, but this month we learned that these companies cut off wiretaps, including wiretaps of terrorists, because the FBI failed to pay its telephone bills. How can this administration talk repeatedly, on the one hand, about the importance of FISA surveillance, and on the other hand, fail to pay its phone bills and jeopardize this critical surveillance. But beyond that, the fact that carriers were willing to cut off surveillance when they were not paid—presumably some of the same carriers that agreed to conduct warrantless surveillance—undercuts the argument about their patriotic motives.

As one former FBI special agent has said, "It sounds as though the telecoms believe it when the FBI says the warrant is in the mail, but not when they say the check is in the mail."

I believe the rule of law is important in protecting the rights of Americans from unlawful surveillance. I do not believe that Congress can or should seek to take those rights and those claims from those already harmed. Moreover, ending ongoing litigation eliminates perhaps the only viable avenue of accountability for the Government's illegal actions. Therefore, I say again: I oppose blanket retroactive immunity.

I do support and will vote for the amendment that Senators SPECTER and WHITEHOUSE will offer on "substitution." This amendment would place the Government in the shoes of the private defendants that acted at its behest and let it assume full responsibility for illegal conduct. The Specter-Whitehouse amendment contains an explicit waiver of sovereign immunity, which will allow the lawsuits to proceed against the United States, and it makes other changes designed to assure that the Government does not have advantages as a defendant that the carriers would not have. While I see no need to deal with the issue of lawsuits against the providers in this Congress, I believe that substitution is a fairer means of dealing with these lawsuits than full retroactive immunity, because it would give the plaintiffs their day in court, and it would allow for a measure of accountability for the administration's actions in the years following 9/11.

This administration violated FISA by conducting warrantless surveillance

for more than 5 years. They got caught, and the telecommunications carriers got sued. Now, the administration insists that those lawsuits be terminated by Congress, so that it does not have to answer for its actions. Retroactive immunity does more than let the carriers off the hook. It shields this administration from any accountability for conducting surveillance outside of the law. It would stop dead in their tracks the lawsuits that are now working their way through the courts, and leave Americans whose privacy rights have been violated with no chance to be made whole. These lawsuits are perhaps the only avenue that exists for an outside review of the Government's actions. That kind of assessment is critical if our Government is to be held accountable. That is why I do not support legislation to terminate these legal challenges and I will vote to strike it.

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

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

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2008—CONFERENCE REPORT

Mr. REID. Mr. President, I ask unanimous consent that the Senate now proceed to the conference report to accompany H.R. 2082, the Intelligence authorization conference report.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The bill clerk read as follows:

The committee of conference on the disagreeing votes of the two houses on the amendment of the Senate to the bill (H.R. 2082), to authorize appropriations for fiscal year 2008 for intelligence and intelligence-related activities of the United States Government, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of December 6, 2007, beginning at page H14462.)

CLOTURE MOTION

Mr. REID. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule

XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the conference report to accompany H.R. 2082, Intelligence Authorization Act.

John D. Rockefeller, IV, Dianne Feinstein, Kent Conrad, E. Benjamin Nelson, Russell D. Feingold, Barbara A. Mikulski, Ron Wyden, Ken Salazar, Mark Pryor, Patty Murray, Benjamin L. Cardin, Frank R. Lautenberg, Jack Reed, Sheldon Whitehouse, Harry Reid, Carl Levin, Bill Nelson.

Mr. REID. Mr. President, I ask unanimous consent the mandatory quorum call be waived.

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

FISA AMENDMENTS ACT OF 2007— Continued

Mr. REID. Mr. President, I ask unanimous consent that the Senate resume consideration of S. 2248.

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

Mr. REID. Mr. President, I just finished a conference with the distinguished Republican leader, and we both believe this is the best way to go. We will, at some time, finish the intelligence conference report one way or the other, and following that, we will likely move to the Indian health bill to try to complete that.

We have had a productive day. It is my understanding there are only two speakers left on the FISA legislation, and that is Senator DODD and Senator SPECTER. If there are others, they should notify the cloakroom forthwith.

We have eight votes we are going to do tomorrow, and staff is working on a consent to get to those votes. If we finish them, regardless, it would be better if we do this by consent. We are going to start the votes early in the morning. There will be no morning business tomorrow. We have eight votes to do tomorrow and complete a lot of talk on this bill, and that way we can send it to the House very quickly and they will come back and tell us something, we hope, by the end of the week.

We all hope it is not necessary that we have an extension, but time will tell.

Mr. President, I suggest the absence of a quorum.

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

Mr. REID. Mr. President, I ask unanimous consent that when the Senate resumes S. 2248 on Tuesday morning, February 12, the sequence of votes on remaining amendments occur in the following order: Whitehouse 3920, subject to a 60-vote threshold; Feinstein 3910, subject to a 60-vote threshold; Feingold 3979; Dodd 3907; Feingold 3912;

Bond-Rockefeller 3938, as modified; Specter-Whitehouse 3927; Feinstein 3919, with a 60-vote threshold; and that each leader control a total of 10 minutes of debate time to be used prior to any of the votes; that the provisions of the previous order governing debate limitations and vote limitations remain in effect.

We are going to do as many of these as we can before the weekly party conferences. With a little bit of luck, we can finish all of them.

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

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

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

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

NATIVE AMERICAN HOUSING AND SELF-DETERMINATION ACT

Mr. DODD. Mr. President, I come to the floor today to discuss the Banking Committee's action on S. 2062, the Native American Housing Assistance and Self-Determination Reauthorization Act of 2007. Senator SHELBY and I agreed to discharge this bill from the Banking Committee, with an amendment, to help move the bill along.

This legislation reauthorizes the Native American Housing and Self-Determination Act, NAHASDA, which provides critical funds for housing Native Americans who suffer significant and unique housing problems. According to HUD data, almost one-third of Native Americans have severe housing burdens. They live in overcrowded conditions, lack basic plumbing and utilities, or pay over half of their income for their housing costs. NAHASDA is the primary way that Indian tribes are assisted in addressing these critical housing needs.

The amendment drafted by Senator SHELBY and I includes a provision to clarify that this bill should not interfere with ongoing court cases regarding funding allocations. I want to acknowledge the contributions of Senators TESTER and ENZI in working on this provision. In addition, the amendment helps to retain the requirements that funds be used for those Native Americans in the worst housing situations and that funds continue to be used to increase affordable housing opportunities.

I look forward to working with my colleagues to quickly pass S. 2062 as amended.

SCHOOL SAFETY AND LAW ENFORCEMENT IMPROVEMENT ACT

Mr. LEAHY. Mr. President, it has now been nearly 10 months since the horrific incident at Virginia Tech resulted in the tragic deaths of 32 students and faculty members, and serious injuries to many other innocent victims. During that time, we have witnessed a barrage of new incidents involving threatening conduct and, too often, deadly acts of violence at our schools and college campuses nationwide.

Just in the last few days tragedy has struck at one of our Nation's high schools and on a university campus. Today's press reports indicate that a student at Mitchell High School in Memphis, TN, is in critical condition after a violent incident in the school's cafeteria. Just this past Friday, a female student killed two other women, and then herself, inside a classroom on the campus of Louisiana Technical College in Baton Rouge. This terrible incident could easily have been even more deadly: there were nearly 20 people in the classroom at the time.

The Senate has so far failed to take up and pass the School Safety and Law Enforcement Improvement Act of 2007, S. 2084, which the Judiciary Committee reported last September to help improve school safety. This comprehensive legislation should be considered and passed without further delay.

In originating the bill over 6 months ago, the Judiciary Committee showed deference to Governor Tim Kaine and the task forces at work in Virginia, and sought to complement their work and recommendations. Working with several Senators, including Senators BOXER, REED, SPECTER, FEINGOLD, SCHUMER, and DURBIN, the committee originated this bill and reported it at the start of the 2007 academic year. My hope was that Congress would adopt these critical school safety improvements last fall.

Since this bill passed out of the Judiciary Committee, we have seen tragedy at Louisiana Technical College, Delaware State, University of Memphis, SuccessTech Academy in Cleveland, OH, as well as incidents in California, New York, Pennsylvania, and Oregon, to name just a few. I, again, urge the Senate to proceed to consider this comprehensive package of school safety measures. It includes sensible yet effective safety improvement measures supported by law enforcement across the country. We should be doing all that we can to help.

Last October, a troubled student wearing a Fred Flintstone mask and carrying a rifle through campus was arrested at St. John's University in Queens, NY, prompting authorities to lock down the campus for 3 hours. The day after that incident, an armed 17-