

hope to get him involved in some other areas of transparency—perhaps in campaign finance reform and the issue I am going to be speaking about today, that of getting the American people the information—after 6 years of stonewalling—on how many lawful Americans are getting swept up in what will be Dan Coats' top priority, that of the reauthorization of the Foreign Intelligence Surveillance Act.

I want my colleague to know, in my being very much aware of his good work on the Freedom of Information Act issues, that we are going to try and conscript them into some other transparency issues as well.

Mr. CORNYN. Mr. President, may I ask the Senator to yield to consider a couple of brief consent requests?

Mr. WYDEN. Mr. President, of course.

I will tell my colleague, as to what the majority and the minority have agreed to, as soon as those consent requests are ready, then we will take a time out from my remarks and make sure that matter is resolved.

As we wait for the matter Senator CORNYN has mentioned, I will begin the discussion of the nomination of Dan Coats to be the Director of National Intelligence.

I have known Senator Coats for many years. He has been the lead cosponsor of the bipartisan Federal income tax reform proposal, which has been a special priority of mine. I do not know of a single U.S. Senator who does not like Senator Coats. He is honest, a straight shooter, and gracious. My remarks are not about my personal affection for Senator Coats.

The reason I am voting against the nomination is due to the matter I just touched upon with the Senator from Texas, which is, for 6 years, it has been impossible to get the intelligence community to provide the Congress and the American people information that is absolutely critical to the debate on reauthorizing the Foreign Intelligence Surveillance Act. For 6 long years, Democrats and Republicans, both in this body and in the other body, have been trying to get this information.

So this morning, given the fact that this legislation would be the top priority of Senator Coats, as he said in the Intelligence Committee, I want the Senate and the country to understand why this issue is so important.

First, I am happy to yield to my friend from Texas.

The PRESIDING OFFICER. The Senator from Texas.

ORDER OF PROCEDURE

Mr. CORNYN. Mr. President, I thank my colleague for yielding for a brief UC request, as I think this would be in the best interests of the entire Senate.

I ask unanimous consent that notwithstanding rule XXII, the cloture motion on Executive Calendar No. 19, the McMaster nomination, be withdrawn; that the time until 1:45 p.m. be equally divided in the usual form on the Coats and McMaster nominations

concurrently; and that at 1:45 p.m. the Senate vote on the Coats nomination, followed by a vote on the McMaster nomination; and that, if confirmed, the President be immediately notified of the Senate's actions, with no intervening action or debate. I further ask that 1 hour of minority debate time be reserved for Senator WYDEN.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. CORNYN. Mr. President, I also ask unanimous consent that following morning business on Tuesday, March 21, the Senate proceed to executive session for the en bloc consideration of the following nominations: Executive Calendar Nos. 21 and 22. I ask unanimous consent that the time until 12 noon be equally divided and that following the use or yielding back of time, the Senate vote on the nominations, en bloc, with no intervening action or debate; that, if confirmed, the motions to reconsider be considered made and laid upon the table, en bloc, and the President be immediately notified of the Senate's action; that no further motions be in order; and that any statements relating to the nominations be printed in the RECORD.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. CORNYN. Mr. President, I thank my friend and colleague for yielding for those unanimous consent requests.

Mr. WYDEN. I thank my colleague.

Now, as we consider the nomination of Senator Coats, and recognize that his top priority, by his admission, would be the reauthorization of the Foreign Intelligence Surveillance Act—particularly section 702—I want to begin this discussion by saying that it is because the intelligence community has stonewalled Democrats and Republicans in both this body and in the other body for 6 years on the information that we need to do good oversight that I have come to the floor to outline what I think the central issue is all about.

I am going to begin my remarks by way of saying that, at a time when Americans are demanding policies that give them more security and more liberty, increasingly, we are seeing policies come from both this body and the other body that provide less of both.

A good example would be weakening strong encryption. Weakening strong encryption is bad from a security standpoint, and it is bad from a liberty standpoint. When government creates policies that give the American people less of both—less security and less liberty—obviously, the American people are not going to react well.

My view is that when the government—particularly intelligence agencies—don't level with the American people about large-scale surveillance of law-abiding Americans, our people are justifiably angry. When the government tries to keep this information secret—as I have pointed out on this

floor before—in America, the truth always comes out. Leveling with the American people is the only way for agencies to have the credibility and the legitimacy to effectively do their jobs. They have critically important jobs in keeping our people safe from threats.

Now, with respect to Senator Coats, at his confirmation hearing, since he said the Foreign Intelligence Surveillance Act would be his top priority, I asked our former colleague how many Americans—innocent, law-abiding Americans—have actually been swept up in the surveillance program known as section 702 of the Foreign Intelligence Surveillance Act. Under section 702, the government conducts warrantless surveillance of foreigners who are reasonably believed to be overseas. It does this work by compelling telecommunications companies and internet service providers to provide the content, phone calls, and emails, and other individual communications.

Now, there are several different ways this happens, and I will get to that in the course of these remarks. What we are talking about—what I want people to understand—is that this goes to the content of communications. This is not about metadata collection. Congress, as the Senate knows, reformed that in the USA FREEDOM Act. This is surveillance without any warrants, and once the FISA Court signs off on the overall program, the details are up to the government.

Now, this was not always the case. For decades, individual warrants were required when the government needed the assistance of the country's telecommunications firms. Then the Bush administration created a secret, but legal, warrantless wiretapping program.

After the program was revealed, the government then went to the Foreign Intelligence Surveillance Act Court to get approval. But when the government ran into some trouble with the court, the Bush administration argued that the Congress should create the current program. It was first passed in 2007 under the name Protect America Act. That became the Foreign Intelligence Surveillance Act Amendments Act of 2008.

Now, fortunately, the Congress included a sunset provision, which is why it was up for reauthorization in 2012, and that is why it is up for reauthorization this year. This year it is Senator Coats' top priority, if confirmed. Whoever is the head of the intelligence community will be the point person for this legislation.

I want it understood that the reason that I am going through this background is that I believe the American people deserve a fully informed debate about the Foreign Intelligence Surveillance Act reauthorization. You cannot have that debate—you cannot ensure that the American people have security and liberty—unless you know the impact of section 702 of that bill on the constitutional rights of law-abiding Americans.

So for 6 years, in this body, Democrats and Republicans—and in the other body, Democrats and Republicans—have been asking the same question: How many law-abiding Americans are having their communications swept up in all of this collection? Without even an estimate of this number, I don't think it is possible to judge what section 702 means for the core liberties of law-abiding Americans. Without this information, the Congress can't make an informed decision about whether to reauthorize section 702 or what kind of reforms might be necessary to ensure the protection of the individual liberties of innocent Americans.

At Senator Coats' nomination hearing before the Senate Intelligence Committee, I asked Senator Coats whether he would commit to providing Congress and the public with this information. I will say, because of my respect for Senator Coats and our long-time cooperation on issues like tax reform and a variety of others, I hoped that Senator Coats would be the one—after 6 years of struggling to get this information—to make a commitment to deliver it to the Senate Intelligence Committee before work on the reauthorization began. Instead, Senator Coats said: "I will do everything I can to work with Admiral Rogers at the NSA to get you that number."

If confirmed, I hope that happens. But after asking for the number of law-abiding Americans who get swept up in these searches for years, and getting stonewalled by the executive branch, hoping to get the information we need to do real oversight is just not good enough.

The problem—the lack of information on the impact of this law on the privacy of Americans—goes all the way back to the origins of the authority. In December of 2007, the Bush administration, in its statement of administration policy on the FISA Amendments Act, stated that it would likely be impossible to count the number of people located in the United States as communications were reviewed by the government. In April of 2011, our former colleague Senator Mark Udall and I then asked the Director of National Intelligence, James Clapper, for an estimate. In July of that year, the Director wrote back and said: "It is not reasonably possible to identify the number of people located in the United States whose communications may have been reviewed under the authority of the Foreign Intelligence Surveillance Act."

He suggested reviewing the classified number of disseminated intelligence reports containing a reference to a U.S. person, but that is very different than the number of Americans whose communications have been collected in the first place. And that is what this is all about: How many law-abiding Americans—innocent, law-abiding Americans—are getting swept up in these searches? It will be an increasingly important issue as the nature of tele-

communications companies continues to change, because it is now a field that is globally interconnected. We don't have telecommunications systems just stopping at national borders. So getting the number of Americans whose communications have been collected in the first place is the prerequisite to doing real oversight on this law and doing our job, at a time when it is being reauthorized and the American people want both security and liberty and understand that the two are not mutually exclusive.

So Director Clapper then suggested reviewing the classified number of targets that were later determined to be located in the United States. But the question has never been about the targets of 702, although the mistaken targeting of Americans and the people in our country is another serious question. The question that Democrats and Republicans have been asking is about how many Americans are being swept up by a program that, according to the law, is supposed to only target foreigners overseas.

So let me repeat that. That is what the law says. The Foreign Intelligence Surveillance Act says that the targets are supposed to be foreigners overseas, and Democrats and Republicans want to know how many law-abiding Americans, who might reside in Alaska or Oregon or anywhere else, are getting swept up in these searches.

(Mr. SULLIVAN assumed the Chair.)

So this bipartisan coalition has kept asking. In July of 2012, anticipating the first reauthorization of section 702 of the Foreign Intelligence Surveillance Act, I and 11 other Senators from both parties wrote to Director Clapper. This bipartisan group wrote:

We understand that it might not be possible for the intelligence community to calculate this number with precision, but it is difficult for us to accept the assertion that it is not possible to come up with even a rough estimate of this number. If generating a precise estimate would require an inordinate amount of labor, we would be willing to accept an imprecise one.

We asked about imprecise estimates, just a ballpark: How many law-abiding Americans are getting swept up in these searches that the law says are designed to target foreigners?

We asked about orders of magnitude: Is the number closer to a hundred or a hundred thousand or a hundred million?

We still got no answer, and section 702 was reauthorized without this necessary information. So last year, looking at the prospect of the law coming up, there was a renewed effort to find out how many law-abiding Americans are getting swept up in these searches of foreigners.

In April 2016, a bipartisan letter from members of the House Judiciary Committee asked the Director of National Intelligence for a public estimate of the number of communications or transactions involving U.S. persons collected under section 702 on an annual basis. This letter, coming from

the House—Democrats and Republicans—again asked for a rough estimate. This bipartisan group suggested working with Director Clapper to determine the methodology to get this estimate. In December, there were hints in the news media that something might be forthcoming. But now, here we are, with a new administration, considering the nomination of the next head of the intelligence community, who has said that reauthorizing section 702 is his top legislative priority, and there is no answer in sight to the question Democrats and Republicans have been asking for over 6 years: How many innocent, law-abiding Americans are getting swept up in these searches under a law that targets foreigners overseas?

Having described this history, I want to explain why this issue is so important, starting with the many ways in which innocent Americans can be swept up in section 702 surveillance.

The first are targeting mistakes in which, contrary to the law, the target turns out to be an American or someone in the United States. The full impact of these mistakes on law-abiding Americans is not readily apparent. The most recent public report on section 702 noted that there were compliance incidents involving surveillance of foreigners in the United States and surveillance of Americans. This is in violation of the law, and it happens.

The second way in which Americans can be swept up in section 702 collection is when they communicate with an overseas target. This is usually called incidental collection and is often mischaracterized. I have heard many times that the program is intended to find out when Americans are communicating with "bad guys"—and I want it understood, I am not interested in some kind of "bad guys caucus." I know of no Senator who is not interested in protecting our country from those kinds of threats. If a known terrorist overseas is communicating with someone in the United States, we ought to know about it. But section 702 is not just a counterterrorism program. The statute requires the collection be conducted "to acquire foreign intelligence information." As implemented, the standard for targeting individuals under the program is that the government has reason to believe those persons possess, are expected to receive, or are likely to communicate foreign intelligence information. Obviously, that is broad. It doesn't even require that a target be suspected of wrongdoing. So if someone tells you that your communications will be collected only if you are talking to al-Qaida or ISIS, that is just factually wrong.

It is also important to note that the government is prohibited from collecting communications only when the sender of an email and everyone receiving that email are in the United States. So an American in the United States could send an email to another American in the United States, but if

the email also goes to an overseas target, it is going to be collected.

That then brings us to the different kinds of collection under section 702 and how they affect the liberties of our people in different ways. In one form of collection known as PRISM, the government orders an internet service provider to provide the government with messages to and from a specific email address. Then there is something known as upstream collection, which is when the communications are collected off the telecommunications and internet backbones. In other words, phone calls and email messages are collected in transit. This kind of collection raises a number of other reasons to be concerned about how many law-abiding Americans are getting swept up. For one, it is through upstream collection that the government can collect emails that are neither to nor from a target. The email merely has to be about a target, meaning, for example, it includes a target's email address in the content. In other words, the government can collect emails to and from Americans, none of whom are of any interest to the government whatsoever, so long as the target's email address is in the content of the email. The law requires only that one of the parties to the communication, who, again, could be another American, is overseas, and even that requirement is harder for the government to meet in practice.

The implications here ought to be pretty obvious. You don't even have to be communicating with one of the government's targets to be swept up in Foreign Intelligence Surveillance Act collection. You don't even have to be communicating with a foreigner. You or somebody emailing you just needs to reference a target's email address.

I have now mentioned that this target is not necessarily a terrorist because the law allows for surveillance "to acquire foreign intelligence information." That has been interpreted to allow the targeting of individuals who the government has reason to believe possess, are expected to receive, or are likely to communicate foreign intelligence information. It is a broad standard, and the government could then collect the communications of all kinds of foreigners around the world. Think about how easy it would be for an American business leader to be in contact with the broad set of potential targets of this program. Consider how easy it would be for Americans, communicating with other Americans, to forward the emails of these people. All of this could be collected by the government.

The upstream collection also includes the collection of what are called multicomunications transactions. This is when the NSA collects an email that is to, from, or about a target, but that email is embedded among multiple other communications that are not. These communications may have nothing to do with the target, but the government just kind of, sort of ends

up with them—and some of them are sent and received entirely within the United States.

These are the ways in which law-abiding Americans—innocent, law-abiding Americans who have done absolutely nothing wrong, both overseas and in the United States—can have their communications collected under the Foreign Intelligence Surveillance Act. These are law-abiding Americans, innocent Americans, not necessarily suspected of anything, and it is their privacy and their constitutional rights that have caused Democrats and Republicans in this body and in the other body to seek the actual numbers of how many law-abiding Americans are getting swept up in these searches that are supposed to target foreigners overseas.

The reason this is important is that the program is getting bigger and bigger. The exact numbers are classified, but the government's public reporting confirms steady increases in collection. At some point, the size of the program and the extent to which Americans' communications are being collected raises obvious concerns about our Fourth Amendment. The question is not if the program raises constitutional concerns, but when. And that gets to the heart of what our bipartisan coalition has been concerned about: If it is not possible for the Senate to know as part of reauthorizing this law how many Americans are being swept up by this program, we cannot determine whether the government has crossed a constitutional line.

The Privacy and Civil Liberties Oversight Board, an agency the Congress has tasked to look at these issues, has raised the very same concerns I am outlining this morning. In the 2014 report by the Board—the nonpartisan organization tasked by the Congress—concluded that the lack of information about the collection of the communications of law-abiding Americans' communications under section 702 "hampers attempts to gauge whether the program appropriately balances national security interests with the privacy of U.S. persons."

They went on to say:

The program [is] close to the line of constitutional reasonableness. At the very least, too much expansion in the collection of U.S. persons' communications or the uses to which those communications are put may push the program over the line.

They recommended exactly what our bipartisan coalition has been calling for—that the government provide to the Congress and, to the extent consistent with national security, that the public and the Congress get data on the collection of these communications of law-abiding Americans.

The most frequently heard argument against what our bipartisan group of House and Senate Members has been calling for is that, whatever number of communications are being collected on law-abiding Americans, it is minimized, which implies that information about Americans is hidden.

This is a particularly important issue. I have heard my colleagues on the other side say frequently: Well, if law-abiding Americans are having their communications swept up, we shouldn't get all concerned about that because this array of Americans' communications is being minimized. Somehow that means it is not getting out; it is being hidden. That is not necessarily what happens. To begin with, all that collection does not stay at the National Security Agency. All the emails collected through the PRISM component of section 702 go to several other agencies, including the CIA and the FBI. Then we have those three agencies, in particular, authorized to conduct searches through all the data for communications that are to, from, or about Americans: Look for an American's name, telephone number, email address, even a key word or phrase. They can do that without any warrant. There doesn't have to be even a suspicion—even a suspicion—that an American is engaged in any kind of wrongdoing. The FBI's authorities are even broader. The FBI can conduct searches for communications that are to, from, or about an American to seek evidence of a crime. Unlike the National Security Agency and the Central Intelligence Agency, the FBI doesn't even report how many searches for Americans it is conducting. Moreover, neither the FBI nor the CIA reports on the number of searches for Americans that it conducts using metadata collected under section 702.

The authority to conduct searches for Americans' communications in section 702 data is new. Before 2011, the FISA Court prohibited queries for U.S. persons. I am going to repeat that. Under the Bush administration and in the first 2 years of the Obama administration, it was not possible to conduct these backdoor, warrantless searches of law-abiding Americans. Then the Obama administration sought to change the rules and obtained authority to conduct them.

In April 2014, the Director of National Intelligence's response to questions from me and Senator Mark Udall publicly acknowledged these warrantless searches. By June the House voted overwhelmingly to prohibit them. That prohibition didn't become law, but I can tell you that it is sure going to be considered in the context of this reauthorization. The House voted overwhelmingly to prohibit these warrantless searches.

So the question really is this: What exactly is the privacy impact of these warrantless searches for Americans? In 2014, I managed to extract from the intelligence community some, but not all, necessary information about how many Americans had been subject of the searches. That was a step forward, but what the data doesn't tell us is who the subjects of these searches are. More to the point, it doesn't tell us how many Americans are potentially the subject of these searches. If the number

is small, the potential for abuse, obviously, would be smaller. If the number is large, the potential for abuse is much greater. Without an understanding of the size of the pool from which the government can pull the communications of law-abiding Americans, there is just no way of knowing how easy it would be for the government to use this law as a means to read the emails of a political opponent, a business leader, a journalist, or an activist.

I now want to turn to the ultimate form of abuse, and that is something called reverse targeting. It is prohibited by law and defined as collection “if the purpose of the acquisition is to target a particular, known person reasonably believed to be in the United States.” This prohibition also applies to U.S. persons. The question, though, is how this is defined and how the public can be assured it is not happening.

If you look at the language, you can see why there has been bipartisan concern. The collection is only prohibited if the purpose is to get the communications of Americans. The question obviously has risen: What if getting the Americans’ communications is only one of the purposes of collecting on an overseas target? What is actually acceptable here?

This issue was concerning in 2008, when the Foreign Intelligence Surveillance Act Amendments Act passed with a prohibition on reverse targeting. But that was before the country knew about the collection of emails that are only about a foreign target and that could be to and from Americans. That was before the Obama administration sought and obtained authority to conduct warrantless searches for communications to, from, and about Americans out of section 702 PRISM collection.

That makes an important point to me. This bipartisan coalition—of which I have been a part—has fought back against executive branch overreach, whether it is a Democratic administration or a Republican administration. I cited the fact that President Obama brought back something with the great potential for abuse and that President Bush said he wanted no part of. As we look at these issues, it is important to understand exactly what the scope of the problem is. Each of the agencies authorized to conduct these warrantless searches—the NSA, FBI, CIA—are also authorized to identify the overseas targets of section 702. The agencies that have developed an interest in Americans’ communications, which are actually looking for these communications, are the same agencies that are in a position to encourage ongoing collection of those communications by targeting the overseas party.

I believe our bipartisan group believes that there is very substantial potential for abuse. Because of these decisions taking place in the executive branch without any judicial oversight,

it is possible that no one would ever know.

To quote the Privacy and Civil Liberties Oversight Board: “Since the enactment of the FISA Amendments Act of 2008, the extent to which the government acquires the communications of U.S. persons under Section 702 has been one of the biggest open questions about the program, and a continuing source of public concern.” The Board noted that the executive branch has responded with any number of excuses for why it couldn’t provide the number of how many innocent law-abiding Americans get swept up in these searches. One excuse has been the size of the program. But as Members—Democrats and Republicans—have said repeatedly, an estimate, perhaps based on a sample, is sufficient. Nobody is dictating how this be done.

Another excuse has been that determining whether individuals whose communications have been collected are American would itself be invasive of privacy. Now this is something of a head-scratcher. I will just say that, as to the value of knowing how many law-abiding Americans get swept up in these searches, privacy advocates have stated that this far-fetched theory, this far-fetched excuse for not furnishing it, doesn’t add up in terms of the benefit of finding how many Americans are swept up in these warrantless searches.

The government is genuinely concerned about the privacy implications of calculating the number. I and many of my colleagues, both Democrats and Republicans, have been willing—and we renewed this in the last few weeks—to have a discussion about the methodology under consideration.

In the months ahead, the Senate is going to be debating a number of issues relating to this topic, such as U.S. person searches, reverse targeting, and the collection of communications that are just about a target. The Senate is going to discuss how to strengthen oversight by the Foreign Intelligence Surveillance Court, the Congress, and the privacy board. The Director of National Intelligence will be right in the center of the debate.

There is more information that the American people need. There is more information that this body needs in order to carry out its responsibility to do real oversight here. The center of these discussions about the reauthorization of the Foreign Intelligence Surveillance Act involves one question: How many innocent, law-abiding Americans have been swept up in this program that has been written and developed to target foreigners overseas? Congress’s judgment about the impact of section 702 depends on getting this number. An assessment of the program’s constitutionality rests on the understanding of the impact it has on Americans. A full grasp of the implications of the warrantless searches of Americans requires knowing how many Americans’ communications are being searched through. Countless questions

related to the reauthorization of the program all require that the public have this information.

I am just going to close by way of saying what those questions are because if you want to do real oversight over a critically important program, you have to have the information to respond to these questions. The questions are these: Should there be safeguards against reverse targeting? Should Congress legislate on “upstream” collections and the collection of communications about targets, which raises unique concerns about the collection of the communications of law-abiding Americans? Are the rules related to the dissemination, use, and retention of these communications adequate? Should there be limits on the use of these communications by the FBI for non-intelligence purposes?

Just think about that one for a minute. What does it mean to people in our part of the world where people feel that liberty and security are not mutually exclusive, but they are going to insist on both? What does it mean to them on the question of whether there ought to be limits on the use of this information by the FBI for non-intelligence purposes? That is exactly the kind of question that people are going to ask.

I am heading home today for town-hall meetings in rural areas, and those are exactly the kind of questions that Oregonians ask. People understand this is a dangerous time. That is not at issue.

I serve on the Intelligence Committee, along with Senator FEINSTEIN, and I have been one of the longer serving members. The fact that this is a dangerous world is not a debatable proposition. There are a lot of people out there who do not wish our country well. But what I say to Oregonians and what I will say again this weekend is this: Any politician who tells you that you have to give up your liberty to have security is not somebody who is working in your interest because smart policies give you both.

That is why I started talking about the benefits of strong encryption—critically important for security. These questions are ones that I don’t think are particularly partisan. That is why a big group of Democrats and Republicans here and in the other body have been seeking the information about how many law-abiding Americans get caught up in these efforts to target a foreigner overseas. We are now at a critical moment. A government surveillance program, with very obvious implications for privacy and constitutional rights, is up for reauthorization by the end of the year. While more information may be part of the answer, we have to have the best possible estimate to answer those questions that I just outlined.

The American people want Congress to get to the bottom of questions that go right to the heart of our having

policies that promote both their security and their liberty. I think the public expects a full debate. You can't have a full and real debate over the Foreign Intelligence Surveillance Act unless you have some sense of how many law-abiding Americans are getting swept up in these searches of foreigners.

I believe the American people expect serious oversight over it. They want assurances that their representatives in Congress have a sense of what is actually being voted on. After years of secret surveillance programs being revealed only in the news media, I think the public has rightly insisted on more openness and more transparency.

So getting the information that I have described today, which will deal with Senator Coats' top priority of reauthorizing the Foreign Intelligence Surveillance Act, is a critical first step. Once the Senate knows the impact of this program on Americans, then you can have a full and real discussion—a real debate in Congress—with the public and with the Director of National Intelligence.

I took the view in the committee, despite very much liking Dan Coats and his being the bipartisan cosponsor of what is still the only Federal income tax reform proposal we have had in the Senate since the 1986 law was authored, I said that I cannot support any nominee to be the head of national intelligence if that nominee will not guarantee that before this reauthorization is brought before the Senate and brought before the Intelligence Committee, that we have the information needed to do our job, to do real oversight, to show the American people it is possible to come up with policies that promote security and liberty. For that reason, despite my friendship with Senator Coats, I cannot support the nomination.

I yield the floor.

Mr. VAN HOLLEN. Mr. President, never before has a sitting President so maligned our intelligence community. President Trump has repeatedly belittled and ridiculed the work of intelligence officials, calling their assessments of Russia's hack into U.S. elections "fake news." Over Twitter, President Trump accused intelligence officers of executing a Nazi-like smear campaign against him. President Trump has sided with the likes of Julian Assange and Vladimir Putin over our own intelligence community.

More disturbingly, President Trump seems to hold shallow views on critical intelligence questions like torture. On the campaign trail, Mr. Trump constantly vowed to reinstate torture, asserting that only "stupid people" would think otherwise. In an interview with the New York Times, Mr. Trump admitted that he was "surprised" that Defense Secretary Mattis opposed torture, while adding that he would be "guided by" mass sentiments on torture. Mr. Trump's pronouncements on torture are dangerous, irresponsible, and rally our enemies.

Senator Dan Coats has an enormous challenge ahead of him. President Trump removed the Director of National Intelligence from the National Security Council, marginalizing the intelligence community's essential role in informing national security decisions. President Trump reportedly plans to hire a New York billionaire with close ties to Steve Bannon to conduct a review of the intelligence agencies, a core responsibility of the Director of National Intelligence, and Senator Coats' hardline assessments of Russia may meet with skepticism in a White House that views Putin so favorably.

I am encouraged by Senator Coats' willingness to work with the Congress in a bipartisan manner, particularly on probes related to Russia's hack into our election. I expect Senator Coats to maintain his commitment to follow the law on enhanced interrogation techniques and not to seek to change them. For these reasons, I support his nomination to the Office of the Director of National Intelligence.

NOMINATION OF HERBERT MCMASTER

Mr. CARDIN. Mr. President, I have a tremendous amount of respect for Lieutenant General McMaster and a great deal of admiration for his willingness to answer the call of service for his Nation as National Security Advisor.

So I want to be clear that none of my comments are intended as a reflection on General McMaster himself.

But I am greatly concerned about the current state of the organization that General McMaster is being asked to run and that the way in which the President and his senior advisers appear to be running it is creating great risk for our Nation.

The President's first National Security Advisor, who lasted less than a month in office, had failed to register as a foreign agent, a job that he held throughout the Presidential campaign and into the transition—so much for America first.

The initial Executive order structuring the National Security Council system for the new administration deliberately omitted the Chairman of the Joint Chiefs and the Director of National Intelligence from the Principals Committee—in other words, a National Security Council without the insight and guidance of our intelligence community or military.

Every administration can structure the White House as it sees fit, but national security without intelligence or military advice is, frankly, mind-boggling.

At the same time, the NSC was to include Steve Bannon, the President's political adviser. Although previous White Houses have had staff from outside the NSC sit in on NSC meetings on occasion and as appropriate, never before has an administration suggested that the NSC's work of safeguarding our Nation be subordinate to the political goals of safeguarding a President's

political position and public opinion ratings.

Alongside the NSC, this White House has established a so-called Strategic Initiatives Group under Mr. Bannon, which is reportedly undertaking strategic reviews of U.S. policy on sensitive issues—including U.S.-Russia relations. Running a shadow NSC with crossing lines of jurisdiction and authority seems like a recipe for disaster.

So all of this has created an environment of dysfunction and an organization in severe distress. It is one thing to run a family real estate company this way, but this is our national security that is at stake.

If there is a crisis tonight—on the Korean Peninsula, with Russia, in the Middle East or Persian Gulf—it is far from clear that the NSC is in a position to provide our senior policymakers with the options they need and the decision-space necessary to safeguard America in a dangerous and unpredictable world.

I wish General McMaster all the best, but hope that he is approaching the challenges of his job with clear-eyed conviction.

Mr. VAN HOLLEN. Mr. President, in a few short months, President Trump has undermined U.S. credibility and our standing abroad. He has called for a nuclear arms race, asserted the United States should invade Iraq to take its oil, lavished praise on Vladimir Putin, and slandered stalwart allies like Australia and Germany. He has issued two Muslim bans—a move lauded by the Islamic State and condemned by top military, intelligence, and diplomatic officials of both parties.

President Trump has put our national security apparatus under enormous stress. He has appointed Steve Bannon, an extremist with the explicit ambition to "destroy the state," to the National Security Council—the highest body charged with protecting the state. He has failed to nominate officials for dozens of crucial national security positions, hobbling our ability to respond to a future national security crisis. He has repeatedly denigrated our intelligence agencies, rejecting findings that clearly demonstrated Russia's role in his election. He has accused the FBI of breaking the law by wiretapping Trump Tower, a groundless claim for which he has offered no proof.

LTG H.R. McMaster is a respected military strategist with a reputation for an independent mind. He has demonstrated throughout his career that he is willing to challenge and criticize U.S. leadership, irrespective of party. He does not appear to be sympathetic to the view of President Trump or Steve Bannon that the United States is at war with the entire Muslim world. Instead, while commanding U.S. forces in Iraq, General McMaster told his soldiers: "Every time you treat an Iraqi disrespectfully, you are working for the enemy."

I am concerned with General McMaster's handling of sexual assault