will have a lot who are paying the AMT, many who have investments of a variety of sorts—I believe that alone could trigger a bit of a revolution around here. I think the challenge is for people to see just the kind of tax hole we have dug ourselves into over the last 20 years—14,000 changes, needless complications.

I really do not see how a middle-class person can get ahead with a Tax Code that discriminates against work. The Senator from Illinois has been a champ for the middle-class kind of family.

Here is the way it works. If a cop in Chicago gets a $500 pay raise, that cop pays 25 percent of his or her pay raise to the Federal Government in income taxes, and then they pay Social Security payroll taxes on top of that. If somebody in downtown Chicago makes all their money from capital gains and investment, they pay 15 percent on their capital gains and no Social Security payroll tax.

Again, I have tried to emphasize that I am not for soaking anybody. I believe in markets, and I believe in creating wealth, as I believe Senators of both political parties do. But as the Senator from Illinois has pointed out, if Senators were really forced to deal with these kinds of situations themselves, starting with the Tax Code complications, when they fill it out on their own, that could start a revolution around here.

I believe this is a bipartisan opportunity that comes along rarely.

I will wrap up with one last point.

I believe the Social Security reform showed a lot about what our citizens think about a vital American program. A lot of Americans love Social Security dearly, and there are a lot of rallies outside the offices of Members of Congress, with folks carrying signs saying, ''I love Social Security.'' I tell colleagues that there will be no rally outside your office with people carrying signs saying, ''We Love the IRS Code.'' This is something which could be reformed, could be changed on a bipartisan basis.

Mr. DURBIN. Mr. President, if the Senator will yield for one question which I think gets to the concern people have about tax reform, it seems like a zero-sum game in this respect: If you end up lowering the taxes paid by someone in order to keep the same return to Government in revenue, you have to raise the taxes for others.

So I ask the Senator to step back from his proposal for a minute. Who are the winners and losers?

Mr. WYDEN. The Senator asks a good question. First, a quick word on my proposal, which is available from the Congressional Research Service and Jane Gravell, the top economist who is there to discuss it with Senators. It would actually reduce the deficit by about $100 billion over 5 years, making downpayments in terms of deficit reduction.

But here is what the distribution profile looks like in terms of our legislation. We believe that upwards of 70 percent of the people in this country would get a solid tax cut. These are middle-class folks making $60,000, $70,000, $80,000, and $90,000. Essentially, what the Congressional Research Service has shown is that millions of middle-class people would get relief. It is upwards of 70 percent. We have calculated that about 15 percent of the people in this country would be treated about the same.

For example—and it is matter of public record, and I can discuss it—I have a Senate wage of about $160,000, and I have a bit of investment income. I come out about the same under my proposal as under the status quo. We have to make 6 or 7 percent of the people in this country who make virtually all their income from capital gains and dividends—not from wages—pay a bit more.

So that is what the distributional effect of one actual proposal looked like. That was again very similar to what happened in 1986 when Ronald Reagan, after having started his Presidency with a set of tax changes—and my colleague will remember they were largely for investment—did an about-face and passed a reform proposal that gave real relief to middle-class people.

I want to close by thanking the Senator from Illinois, who I know has a great interest in this subject and has been a strong champion of the middle class.

The PRESIDING OFFICER. The Senator's time has expired.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FEINGOLD. 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. FEINGOLD. Mr. President, it is my understanding the Senator from New Hampshire is going to make some remarks and I ask unanimous consent that I be recognized after he has completed his remarks.

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

USA PATRIOT ACT ADDITIONAL REAUTHORIZING AMENDMENTS ACT OF 2006—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the motion to proceed to S. 2271, which the clerk will report.

The assistant legislative clerk read as follows:

Motion to proceed to consider S. 2271, a bill to clarify that individuals who receive FISA orders can challenge nondisclosure requirements, that individuals who receive national security letters are not required to disclose the name of their attorney, that libraries are not wire or electronic communication service providers unless they provide specific services, and for other purposes.

The PRESIDING OFFICER. Who seeks time?

The Senator from New Hampshire.

Mr. SUNUNU. Mr. President, I rise today to speak in support of the motion to proceed and in support of the underlying legislation itself. This bill was introduced to make changes, changes to the PATRIOT Act conference report that was delayed at the end of last year, just as we were ready to adjourn for the holidays.

That conference report had some flaws and weaknesses. I began focusing on and working on reauthorization of the PATRIOT Act well over a year and a half ago, recognizing that we could do more to improve the original Act, we could make this bill more balanced by adding better protections for civil liberties even as we reauthorized the law enforcement tools in the PATRIOT Act to give law enforcement power to conduct terrorism investigations.

I don't think there is anyone in this Chamber who believes we should not provide law enforcement with tools necessary to deal with the threat of terrorism, both domestically and overseas. But whenever we give law enforcement new tools, new powers, we want to make sure they are balanced, balanced by the ability of individuals who think they have been singled out unfairly to raise objections in court, balanced by the ability of individuals to seek legal advice, balanced by restricting the use of these tools to ensure they are only used in appropriate circumstances. That is what protecting civil liberties is all about.

As the process of reauthorizing the PATRIOT Act began well over a year and a half ago, a bipartisan group of Senators, including myself, joined to highlight a number of areas where we felt the legislation could and should be improved and strengthened to provide the kinds of protections I mentioned.

We spoke with Justice Department officials, not a month or 2 months before this process began, but, as I've said, over a year and a half ago, raising our concerns in a clear, articulate fashion, trying to make certain that DOJ knew full well that there was a bipartisan group that would push to make changes to improve the PATRIOT Act and that we would be willing to stand up for those changes and stand up on principle.

Unfortunately, the people who should have been engaged in this discussion process early on simply were not and much of the work was left to the very end of the process, and continued after the law was originally set to expire at the end of last year. As a result, changes that should have been made early were not, and we found ourselves

with reauthorization legislation that could not win enough bipartisan votes to gain passage at the end of December.

What I wish to do today is to talk about the changes that were made to the PATRIOT Act earlier in the reauthorization process that better safeguard civil liberties, and the changes that are in this underlying legislation that I think will allow us to move forward with some confidence that we have made additional improvements since the cloture vote in December.

In the conference report that was delayed, I certainly agree that there were many significant improvements made to the original PATRIOT Act. For example, improvements were made to add clarity to a roving wiretap order to require more specificity as to the target or location of the surveillance to be conducted. Improvement was made to add clarity to delayed notification search warrants, which are search warrants that are conducted without immediately telling the targets of the search.

I think delayed notice search warrants are appropriate tools for law enforcement, but at a certain point law enforcement either needs to inform the target of the search or get agreement from a judge to further delay the notification. In the delayed conference report we added clarity. We added a requirement that a target must be notified of a search within 30 days unless a judge agrees to continue delaying the notification.

We were successful when we took a stand at the end of last year in moving the sunset period in the draft conference report from a 7-year sunset on the most controversial provisions of the PATRIOT Act to a 4-year sunset period, so that 215 subpoena power, a very significant subpoena power for law enforcement to access the most sensitive of records, the lone wolf provisions and the roving wiretap provisions I mentioned, would have to be reviewed four years from now.

All of these were improvements to the PATRIOT Act. But a number of us still had many concerns, concerns in three particular areas.

First, our most significant concern was and is the breadth of the standard for obtaining a 215 subpoena. We felt—and we still feel—it is unnecessarily broad. It could result in the gathering of information that is not only extraneous, but pertains to innocent Americans. We think that standard should be more narrow so that there be shown that an individual who is a target of this subpoena be connected to a suspected terrorist or suspected spy. The current standard of mere relevance to a terrorist investigations is unnecessarily broad.

Second, we feel there should be a clear judicial review, a review before a judge, of the gag order associated with the 215 subpoena. If you are the recipient of one of these subpoenas, that subpoena comes with a restriction on your ability to tell anyone about the subpoena. But you ought to be able to challenge that gag order before a judge.

Third, we feel the provision in the conference report that required the recipient of a national security letter to disclose the name of their attorney to the FBI was punitive and might have the result of discouraging an individual from seeking legal advice. Over the last 6 weeks, I have worked with a number of my colleagues, Democrats and Republicans, on changes to the PATRIOT Act, negotiating with the Justice Department, making Members of the House aware of what we were pursuing, working with Chairman ARLEN SPECTER, who has been very helpful throughout this whole process. Senator LEAHY, Senator DURBIN, Senator FEINGOLD have all been part of these discussions and I have worked to share with them the concepts we were working on, the language we were working on in the areas where there were still differences, differences between those who wanted to pass the conference report as it was and those of us who felt we could strike a better balance.

In the end, we have worked out an agreement on language that has received bipartisan support and makes changes to the conference report in three areas.

First, we add a clear, explicit judicial review process for the 215 subpoena gag order. It is a judicial review process that is very similar to the judicial review process for the National Security Letter gag order set forth in the conference report. I think it is important that we stand for the principle that a restriction on free speech such as a gag order can be objected to in a court of law before a judge. You can at least have your case heard. That does not mean you will win, necessarily, but you can at least have your case heard.

Second, we were able to get language striking the requirement that the recipient of a National Security Letter disclose the name of their attorney to the FBI. Again this is a punitive provision, and it could have the unintended effect of discouraging people from seeking legal advice.

Third, we added clarification to National Security Letters as they pertain to libraries. Our agreement adds a provision that makes very clear that libraries operating in their traditional role, including the lending of books, including making books available in digital form, including providing basic Internet access, are not subject to National Security Letters.

These are three areas that were highlighted as being of concern at the end of last year. I did—and I think the others would agree—we all did everything possible to stay focused on these areas of concern. We made improvements in each of these three areas. I think we ought to be able to move forward now with the reauthorization, knowing full well that in an effort such as this, no party ever gets everything they want. But having shown that there is a bipartisan group of Members of the Senate and I believe Members of the House as well who will look carefully at these measures, who will push hard for improvements, I think the oversight of the PATRIOT Act will be improved. I know that the reporting to Congress as to how this act is used will be improved. Requirements to report on the use of 215 subpoenas and the minimization procedures used to get rid of data and information on innocent Americans collected through 215 subpoenas and National Security Letters are improvements.

So I feel confident we have legislation that is a vast improvement over current law in terms of protecting civil liberties. We have oversight that is improved and, frankly, we have a strong coalition within Congress that is committed to doing an effective job in making sure these important law enforcement tools are used effectively but also used fairly.

I know not all my colleagues will support this final package. I know in particular Senator FEINGOLD, who has worked extremely hard on this issue, is not able to support this final package. He will speak more eloquently than I can as to the concerns that remain, but among his concerns is the breadth of the 215 standard and the feeling that we ought to be able to agree on and work toward a standard that will prevent fishing expeditions, that will better protect civil liberties but still enable law enforcement to do their job. I share that concern and that goal, but I at the same time recognize we have an obligation to take the many gains we received throughout the reauthorization process and reauthorize this legislation so we can move forward, focus on our outstanding concerns, and focus on the agenda that still sits before Congress.

I thank the President for the time and the opportunity to lay out the improvements that are in the package before us. I look forward to the debate and the discussion, but I do hope we can, in a deliberate fashion, complete work on this legislation that now has gained bipartisan support, has gained additional votes from Republicans, including Senator CRAIG, Senator HAGEL, Senator MURKOWSKI, who have raised concerns, Senator DURBIN, Senator FEINSTEIN, and others on the Democratic side who have stood with us too since the end of last year in the hopes of improving the balance of the conference report. I think we do the country a service by enacting this legislation now with a commitment to continue to try to improve it wherever we can.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

Mr. FEINGOLD. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator cannot reserve the right to object.

Is there objection?

Mr. SUNUNU. I ask consent that the Senator be allowed to make his point.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. Mr. President, I object to raising the quorum call.

The PRESIDING OFFICER. Without objection, the quorum call is terminated, and the Senator from Wisconsin is recognized.

Mr. FEINGOLD. Mr. President, I ask unanimous—I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FEINGOLD. 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. FEINGOLD. Mr. President, I ask unanimous consent that I be recognized to speak at 11 a.m. on the motion to proceed.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. FEINGOLD. Mr. President, it will come as no surprise that I would like to talk about the PATRIOT Act today, and certainly I listened to the remarks of the Senator from New Hampshire and have greatly enjoyed the experience of working with him on this issue for the last couple of years.

I, of course, come to a very different conclusion about the matters before us. I strongly oppose proceeding to the consideration of S. 2271, which is legislation introduced by some of my friends and colleagues to implement the deal on the PATRIOT Act that was struck by the White House last week.

Some may argue that there is no harm in passing a bill that could charitably be described as trivial. But protecting the rights of law-abiding Americans is not trivial, and passage of S. 2271 is the first step toward passage of the flawed PATRIOT Act conference report.

I will oppose both measures, and I am prepared to discuss at length my reasons for doing so. I do greatly respect the Senators who negotiated this deal, but I am gravely disappointed in the outcome. The White House would agree to only a few very minor changes to the same PATRIOT Act conference report that could not get through the Senate just back in this past December. These changes do not address the major problems with the PATRIOT Act that the bipartisan coalition has been trying to fix for the past several years.

In fact, the Senator from New Hampshire described the issues that brought us together, the points that brought us together. This agreement doesn't relate, in any significant way, to the provisions that we were concerned about that brought us together in a bipartisan way.

What came out of this agreement is, quite frankly, a figleaf to allow those who were fighting hard to improve the act to step down, claim victory, and move on. What a hollow victory that would be and what a complete reversal of the strong, bipartisan consensus that we saw in this body a couple months ago.

What we are seeing, I regret to say, is quite simply a capitulation on the intransigent and misleading rhetoric of the White House that sees any effort to protect civil liberties as a sign of weakness. Protecting American values is not weakness. Standing on principle is not weakness. Committing to fight terrorism aggressively without compromising the rights and freedoms this country was founded upon is not weakness either.

We have come too far and fought too hard to agree to reauthorize the PATRIOT Act without fixing any of the major problems with the act. A few insignificant face-saving changes don't cut it. So I cannot support this deal. I strongly oppose proceeding to legislation that would implement it.

I understand the pressure my colleagues have been under on this issue, and I again want to say I appreciate all the hard work they have done on the PATRIOT Act. It has been very gratifying to work on a bipartisan basis on this issue. It is unfortunate the White House is so obviously trying to make this into a partisan issue because it sees some political advantage in doing so. But whether the White House likes it, this will continue to be an issue where both Democrats and Republicans have concerns, and we will continue to work together for changes in the law. I am sure of that. But I will also continue to strongly oppose any reauthorization of the PATRIOT Act that doesn't protect the rights and freedoms of law-abiding Americans who have absolutely no connection whatsoever to terrorism.

This deal does not meet that standard. Frankly, Mr. President, it doesn't even come close. I urge my colleagues to oppose it and I, therefore, ask that they oppose even proceeding to this legislation.

I wanted to take some time to lay out the background and context for this ongoing debate over the PATRIOT Act, a debate that will not end with the reauthorization of the 16 provisions that are now set to expire March 10. And I want to discuss my concerns about this reauthorization deal with some specificity.

Mr. President, because I was the only Senator to vote against the PATRIOT Act in 2001, I want to be very clear from the start. I am not opposed to reauthorization of the PATRIOT Act. I supported the bipartisan compromise, the reauthorization bill the Senate passed last July without a single Senator objecting. I believe that bill should become law.

The Senate reauthorization bill is not a perfect bill, but it is actually a good bill. If that were the bill we considered back in December or the bill we were considering today, I would be speaking in support of it. In fact, we could have completed the process of reauthorizing the PATRIOT Act months ago if the House had taken up the bill that the Senate approved without any objection from any Senator on either side of the aisle.

I also want to respond to those who argue that any people who are continuing to call for a better reauthorization package want to let the PATRIOT Act expire. That is nonsense. Not a single Member of this body is calling for any provision—not only that the bill should not be reauthorized, but no Senator is calling for even one provision at all to actually expire. There are any number of ways we can reauthorize the act, while amending its most problematic provisions, and I am not prepared to support reauthorization without adequate reform.

Let me also be clear about how this process fell apart at the end of last year and how we ended up having to extend the PATRIOT Act temporarily past the end of 2005. In December, this body, in one of its prouder moments in recent years, refused to let through a badly flawed conference report. A bipartisan group of Senators stood together and demanded further changes. We made very clear what we were asking for. We laid out five issues that needed to be addressed to get our support.

Let me quickly read excerpts from a letter that we sent out explaining our concerns:

The draft conference report would allow the Government to obtain sensitive personal information on a mere showing of relevance. This would allow Government fishing expeditions. As business groups like the U.S. Chamber of Commerce have argued, the Government should be required to convince a judge that the records they are seeking have some connection to a suspected terrorist or spy.

The draft conference report does not permit the recipient of a section 215 order to challenge its automatic, permanent gag order. Courts have held that similar restrictions violate the First Amendment. The recipient of a section 215 order is entitled to meaningful judicial review of the gag order.

The draft conference report doesn't provide meaningful judicial review of a national security letter's gag order. It requires the court to accept as conclusive the Government's assertion that a gag order should not be lifted, unless the court determines the

Government is acting in bad faith. The recipients of NSLs are entitled to meaningful judicial review of a gag order.

The draft conference report does not sunset the NSL authority. In light of recent revelations about possible abuses of NSLs, the NSL provision should sunset in no more than four years so that Congress will have an opportunity to review the use of this power.

The draft conference report requires the Government to notify the target of a ''sneak and peek'' search no earlier than 30 days after the search, rather than within seven days, as the Senate bill provides and as pre-PATRIOT Act judicial decisions required. The conference report should include a presumption that notice will be provided within a significantly shorter period in order to better protect Fourth Amendment rights. The availability of additional 90-day extensions means that a shorter initial timeframe should not be a hardship on the Government.

Those are the key parts of the letter that we sent late last year. Now, you might ask, in this newly announced deal on the PATRIOT Act, have any of these problems been solved? Have any of the five problems identified by the SAFE Act authors been solved?

The answer is simple, Mr. President. The answer is: No, not a single one. Only one of these issues has been even partially addressed by this deal. The White House applied immense pressure and pulled out its usual scare tactics and succeeded in somehow convincing people to accept a deal that makes only a tiny substantive improvement to a bill that was actually rejected in December. This is simply not acceptable.

I want to explain in detail my biggest concerns with the conference report, as modified by S. 2271, the legislation that the majority leader is seeking to take up. First, I want to clear up one frequent misconception. I have never advocated repeal of any portion of the PATRIOT Act. In fact, as I have said repeatedly over the past 4 years, I supported most of that bill. There were many good provisions in that bill. As my colleagues know, the PATRIOT Act did a lot more than expand our surveillance laws. Among other things, it set up a national network to prevent and detect electronic crimes, such as the sabotage of the Nation's financial sector; it established a counterterrorism fund to allow the Justice Department offices, disabled in terrorist attacks, to keep operating; and it changed the money laundering laws to make them more useful in disrupting the financing of terrorist organizations. One section even condemned discrimination against Arab and Muslim Americans.

Even some of the act's surveillance sections were reasonable. One provision authorized the FBI to expedite the hiring of translators. Another added terrorism and computer crimes to the list of crimes for which criminal wiretap orders could be sought. And some provisions helped to bring down what has been called frequently ''the wall''—the wall that had been built up between intelligence and law enforcement agencies.

Whenever we start debating the PATRIOT Act, we hear a lot of people saying we must reauthorize the PATRIOT Act in order to ensure that the wall doesn't go back up. So let me make it clear. I supported the information-sharing provisions of the PATRIOT Act. One of the key lessons we learned in the wake of September 11 was that our intelligence and law enforcement agencies were not sharing information with each other, even where the statutes permitted it.

Unfortunately, the wall was not so much a legal problem as it was a problem of culture. That is not just my conclusion. The report of the 9/11 Commission made that very clear. I am sorry to report we have not made as much progress as we should have in bringing down those very significant cultural barriers to information sharing among our agencies. The 9/11 Commission report card that was issued toward the end of last year gave the Government a ''D'' for information sharing because our agencies' cultures have not changed enough. A statement issued by Chairman Kean and Vice Chairman Hamilton explained, ''You can change the law, you can change the technology, but you still need to change the culture. You still need to motivate institutions and individuals to share information.'' And so far, apparently, our Government has not met that challenge.

Talking about the importance of information sharing, as administration officials and other supporters of the conference report have done repeatedly, is part of a pattern that started several years ago on this issue of renewing or revising the PATRIOT Act. Rather than engage in a true debate on the controversial parts of the PATRIOT Act, as some in this body have done—to their credit—during this reauthorization process, many proponents of the PATRIOT Act point to the noncontroversial provisions of the act and talk about how important they are. They say this bill must be passed because it reauthorizes those noncontroversial provisions. But, that doesn't advance the debate; it muddies the waters because we all agree that those provisions should be continued.

The point is we don't have to accept bad provisions to make sure the good provisions become law, or continue to be law.

I hope I actually advance the debate. I want to spend some time explaining my specific concerns with the conference report and the deal that was struck to make a few minor changes to it. It is unfortunate the whole Congress could not come together, as the Senate did around the Senate's bipartisan compromise reauthorization bill. In July, the Senate Judiciary Committee voted unanimously in favor of a reauthorization bill that made meaningful changes to the most controversial provisions of the PATRIOT Act to protect the rights and freedoms of innocent Americans.

Shortly thereafter, that bill passed the full Senate by unanimous consent. It was not entirely easy for me to support the Senate bill, which fell short of the improvements contained in the bipartisan SAFE Act. But at the end of the day, the Senate bill actually contained meaningful changes to some of the most problematic provisions in the PATRIOT Act—provisions I have been trying to fix since October 2001—so I decided to support it. I made it very clear at the time, however, that I viewed the bill as the end point of negotiations, not the beginning. In fact, I specifically warned my colleagues ''that the conference process must not be allowed to dilute the safeguards in this bill.'' Obviously, I meant it, but it appears that people either were not listening or weren't taking me seriously. This conference report, as slightly modified by this deal, unfortunately does not contain many important reforms to the PATRIOT Act we passed in the Senate, so I cannot support it. And I will fight.

I wish to remind my colleagues of the serious problems with the PATRIOT Act which we have been discussing for several years now. Let me start with section 215, the so-called library provision, which has received probably the most public attention of any one of the controversial provisions. I remember when the former Attorney General of the United States called the librarians who were expressing disagreement with this provision ''hysterical.'' What a revelation it was when the Chairman of the Judiciary Committee, the Senator from Pennsylvania, opened his questioning of the current Attorney General during his confirmation hearing by expressing concerns about this provision of the PATRIOT Act, section 215. He got the Attorney General to concede that, yes, in fact, this provision probably went a bit too far and could be improved and clarified. And that was really an extraordinary moment. It was a moment that was very slow in coming, and it was long overdue.

I give credit to the Senator from Pennsylvania because it allowed us to start having a real debate on the PATRIOT Act. Credit also has to go to the American people, who stood up, despite the dismissive and derisive comments of Government officials, and said, with loud voices: The PATRIOT Act needs to be changed.

My colleagues know as well as I do that these voices came from the left and the right, from big cities and small towns across America. So far, more than 400 State and local governmental bodies have passed resolutions calling for revisions to the PATRIOT Act. I plan to read some of those resolutions on the floor during this debate, and there are a lot of them. Nearly every one mentions section 215.

Section 215 is at the center of this debate over the PATRIOT Act. It is also one of the provisions that I tried unsuccessfully to amend here on the floor in October of 2001. So it makes sense to start my discussion of the specific problems I have with the conference report with the infamous ''library'' provision.

Section 215 of the PATRIOT Act allows the Government to obtain secret court orders in domestic intelligence investigations to get all kinds of business records about people, including not just library records but also medical records and various other types of business records. The PATRIOT Act allowed the Government to obtain these records as long as they were ''sought for'' a terrorism investigation. That is all they had to say. That is a very low standard. It didn't require that the records concern someone who was suspected of being a terrorist or spy or even suspected of being connected to a terrorist or a spy. It didn't require any demonstration of how the records would be useful in the investigation. Under section 215, if the Government simply said it wanted records for a terrorism investigation, the secret FISA Court was required to issue the order—no discretion required to issue the order, period. To make matters worse, recipients of these orders are also subject to an automatic gag order. They cannot tell anyone that they have been asked for records.

Some in the administration and even in this body took the position that people shouldn't be able to criticize these provisions until they could come up with a specific example of ''abuse.'' The Attorney General has repeatedly made that same argument, and he did so again in December in an op-ed in the Washington Post when he dismissed concerns about the PATRIOT Act by saying that ''there have been no verified civil liberty abuses in the 4 years of the Act's existence.''

First of all, that has always struck me as a strange argument since 215 orders are issued by a secret court and people who receive them are prohibited by law from discussing them. In other words, the law is designed—it is actually designed—so that it is almost impossible for you to know if abuses have occurred. But even more importantly, the claim about lack of abuse just isn't credible anymore, given what we now know about how this administration views the surveillance laws that this body, this Congress, writes. We now know that for the past 4-plus years, the Government has been wiretapping the international communications of Americans inside the United States without obtaining the wiretap orders required by statute.

If we want to talk about abuses, I can't imagine a more shocking example of an abuse of power than to violate the law by eavesdropping on American citizens without first getting a court order based on some evidence, some evidence that they are possibly criminals or terrorists or spies. So I don't want to hear again from the Attorney General or anyone on this floor that this Government has shown it can be trusted to use the power we give it with restraint and care.

The Government should not have those kinds of broad, intrusive powers in section 215—not this Government, not any government. The American people shouldn't have to live with a poorly drafted provision which clearly allows for the records of innocent Americans to be searched and just hope that the Government uses it with restraint. A government of laws doesn't require its citizens to rely on the good will and good faith of those who have these powers, especially when adequate safeguards could easily be written into the law—easily be written into the law—without compromising their usefulness as a law enforcement or antiterrorist tool.

After lengthy and difficult negotiations, the Judiciary Committee came up with language that achieved that goal. It would require the Government to convince a judge that a person has some connection to terrorism or espionage before obtaining their sensitive records. When I say ''some connection,'' that is what I mean. The Senate bill's standard is the following: No. 1, that the records pertain to a terrorist or spy; No. 2, that the records pertain to an individual in contact with or known to a suspected terrorist or spy; or No. 3, that the records are relevant to the activities of a suspected terrorist or spy. That is the three-prong test in the Senate bill, and I believe it is more than adequate to give law enforcement the power it needs to conduct investigations while also sufficiently protecting the rights of innocent Americans. It would not limit the types of records the Government could obtain, and it does not go as far to protect law-abiding Americans as I would prefer, but it would make sure the Government cannot go on fishing expeditions into the records of completely innocent people.

The Senate bill would also give recipients of the 215 order an explicit, meaningful right to challenge those orders and the accompanying gag orders in court. These provisions passed the Senate Judiciary Committee unanimously after tough negotiations late into the night, and as anyone familiar with the Judiciary Committee knows, including the Chair, that is no mean feat, to get that done in the Judiciary Committee on any issue.

The conference report did away with this delicate provision. First and most importantly, it does not contain the critical modifications to the standard for section 215 orders. The Senate permits the Government to obtain business records only if it can satisfy one or more of the prongs of the three-prong test I just described. This is a broad standard, and it has a lot of flexibility. But it retains the core protection—the core protection—that the Government cannot go after someone who has no connection whatsoever to a terrorist or spy or their activities.

The conference replaces the three-prong test with a simple relevance standard. It then provides a presumption of relevance that the Government meets one of the three prongs. It is silly to argue that this is adequate protection against a fishing expedition. The only actual requirement in the conference report is that the Government show that those records are just relevant to an authorized intelligence investigation—that is all—just relevant to an authorized intelligence investigation. Relevance is a very broad standard that could arguably justify the collection of all kinds of information about all kinds of law-abiding Americans. The three prongs are just examples of how the Government can satisfy the relevance standard. That is not simply a loophole or an exception that swallows the rule; the exception is the rule. The exception basically destroys the meaning of the carefully considered three-prong test we all supported in the Senate.

I will try to make this as straightforward as I can. The Senate bill requires the Government to satisfy one of three tests. Each test requires some connection between the records and a suspected terrorist or spy. But the conference report says that the Government only is required to satisfy a new fourth test, and that test is only relevance and which does not require a connection between the records and a suspect. So the other three tests no longer provide any protections at all.

This issue was perhaps the most significant reason I and others objected to the conference report. So, naturally, the question today is, How was this issue addressed by the White House deal to get the support of some Senators? The answer is, It wasn't. Not one change was made on the standard for obtaining section 215 orders, and that is a grave disappointment. The White House refused to make any changes at all. Not only would it not accept the Senate version of section 215, which no Member of this body objected to back in July, it wouldn't make any change in the conference report on this issue at all.

Another significant problem with the conference report that was rejected back in December is that it does not authorize judicial review of the gag order that comes with a section 215 order. While some have argued that the review by the FISA Court of a Government application for a section 215 order is equivalent to judicial review of the accompanying gag order, that is simply inaccurate. The statute does not give the FISA Court any latitude to make an individualized decision about whether to impose a gag order when it issues a section 215 order. It is required by statute to include a gag order in every section 215 order. That means the gag order is automatic and permanent in every case.

This is a serious deficiency and one which very likely violates the First Amendment. In litigation challenging a similar, permanent, automatic gag rule in a national security letter statute, two courts have found first amendment violations because there is no individualized evaluation of the need for secrecy. I have those decisions here,

and perhaps I will have a chance to read them during this debate.

This question of judicial review of the section 215 gag order is one issue that is actually addressed in some way by the White House deal—addressed but not solved. Far from it. Under the deal, there is judicial review of section 215 gag orders, but it can only take place after a year has passed, and it can only be successful if the recipient of the section 215 order proves that the Government has acted in bad faith. As many of us have argued in the context of national security letters, that is a virtually impossible standard to meet. What we need is meaningful judicial review of these gag orders, not just the illusion of it.

I do acknowledge one change made by the White House deal that I do think is an improvement over the conference report. The conference report clarifies that the recipients of both section 215 orders and national security letters, which I will discuss in detail in a moment, can consult an attorney, but it also includes a provision that requires the recipients of these letters to notify the FBI if they consult with the attorney and to identify the attorney to the FBI. Obviously, this could have a significant chilling effect on the right to counsel. The deal struck with the White House makes clear that recipients of section 215 orders in national security letters would not have to tell the FBI if they consult with an attorney. That is an improvement over the conference report but, unfortunately, it is only one relatively minor change.

Let me now turn to a very closely related provision that has finally been getting the attention it deserves: national security letters, or NSLs—an authority that was expanded by section 358 and 505 of the PATRIOT Act. This NSL issue has flown under the radar for years, even though many of us have been trying to bring more public attention to it. I am gratified that we are finally talking about NSLs, in large part due to a lengthy Washington Post story published last year on the use of these authorities.

What are NSLs, and why are they such a concern? Let me spend a little time on this because it is quite important. National security letters are issued by the FBI to businesses to obtain certain types of records. So they are similar to section 215 orders, but with one very critical difference: the Government does not need to get any court approval whatsoever to issue them. It doesn't have to go to the FISA Court and make even the most minimal showing. It simply issues the order signed by the special agent in charge of a field office or some other FBI headquarters official.

NSLs can only be used to obtain certain categories of business records, in fairness, while section 215 orders can be used to obtain ''any tangible thing.''

But even the categories reachable by an NSL are quite broad. NSLs can be used to obtain three types of business records: subscriber and transactional information related to Internet and phone usage; credit reports; and financial records, a category that has been expanded to include records from all kinds of everyday businesses like jewelers, car dealers, travel agents and even casinos.

Just as with section 215, the PATRIOT Act expanded the NSL authorities to allow the Government to use them to obtain records of people who are not suspected of being, or even of being connected to, terrorists or spies. The Government need only certify that the documents are either sought for or relevant to an authorized intelligence investigation, a far-reaching standard that could be used to obtain all kinds of records about innocent Americans. And just as with section 215, the recipient is subject to an automatic, permanent gag rule.

The conference report does little to fix the problems with the national security letter authorities. In fact, it could be argued that it makes the law worse. Let me explain why.

First, the conference report does nothing to fix the standard for issuing an NSL. It leaves in place the breathtakingly broad relevance standard. Now, some have analogized NSLs to grand jury subpoenas, which are issued by grand juries in criminal investigations to obtain records that are relevant to the crime they are investigating. So, the argument goes, what is the big deal if NSLs are also issued under a relevance standard for intelligence investigations?

Two critical differences make that analogy break down very quickly. First of all, the key question is: Relevant to what? In criminal cases, grand juries are investigating specific crimes, the scope of which is explicitly defined in the criminal code. Although the grand jury is quite powerful, the scope of its investigation is limited by the particular crime it is investigating. In sharp contrast, intelligence investigations are, by definition, extremely broad. When you are gathering information in an intelligence investigation, anything could potentially be relevant. Suppose the Government believes a suspected terrorist visited Los Angeles in the last year or so. It might then want to obtain and keep the records of everyone who has stayed in every hotel in L.A., or booked a trip to L.A. through a travel agent, over the past couple years, and it could argue strongly that that information is relevant to a terrorism investigation because it would be useful to run all those names through the terrorist watch list.

I don't have any reason to believe that such broad use of NSLs is happening. But the point is that when you are talking about intelligence investigations, ''relevance'' is a very different concept than in criminal investigations. It is certainly conceivable that NSLs could be used for that kind of broad dragnet in an intelligence investigation. Nothing in current law prevents it. The nature of criminal investigations and intelligence investigations is different, and let's not forget that.

Second, the recipients of grand jury subpoenas are not subject to the automatic secrecy that NSL recipients are. We should not underestimate the power of allowing public disclosure when the Government overreaches. In 2004, Federal officials withdrew a grand jury subpoena issued to Drake University for a list of participants in an antiwar protest because of public revelations about the demand. That could not have happened if the request had been under section 215 or for records available via the NSL authorities.

Unfortunately, there are many other reasons why the conference report does so little good on NSLs. Let's talk next about judicial review. The conference report creates the illusion of judicial review for NSLs, both for the letters themselves and for the accompanying gag rule, but, if you look at the details, it is drafted in a way that makes that review virtually meaningless. With regard to the NSLs themselves, the conference report permits recipients to consult their lawyer and seek judicial review, but it also allows the Government to keep all of its submissions secret and not share them with the challenger, regardless of whether there are national security interests at stake. So you can challenge the order, but you have no way of knowing what the Government is telling the court in response to your challenge. The parties could be arguing about something as garden variety as attorney-client privilege, with no national security issues, and the Government would have the ability to keep its submission secret. That is a serious departure from our usual adversarial process, and it is very disturbing.

The other significant problem with the judicial review provisions is the standard for getting the gag rule overturned. In order to prevail, the recipient has to prove that any certification by the Government that disclosure would harm national security or impair diplomatic relations was made in bad faith. Again, this is a standard of review that is virtually impossible to meet. So what we have is the illusion of judicial review. When you look behind the words in the statute, you realize it's just a mirage.

Does the White House deal address these problems? It does not. In fact, as I have already discussed, it expands that same very troubling standard of review to judicial review section 215 gag orders.

The modifications to the conference report agreed to by the White House do contain one other purported change to one of the NSL statutes. This modification states that the FBI cannot issue an NSL for transactional and subscriber information about telephone and Internet usage to a library unless

the library is offering ''electronic communication services'' as defined in the statute. But that just restates the existing requirements of the NSL statute, which currently applies only to entities—libraries or otherwise—that provide ''electronic communication services.'' So that provision has no real legal effect whatsoever. Perhaps that explains why the American Library Association issued a statement calling this provision a ''figleaf'' and expressing disappointment that so many Senators have agreed to this deal.

I also want to take a moment to address, again, an argument that has been made about the NSL provisions of the conference report. It has been argued that many of the complaints I have about the NSL provisions of the conference report apply equally to the NSL provisions of the Senate bill and therefore, because I supported the Senate bill, by some convoluted theory my complaints are therefore invalid and I should support the conference report.

That just makes no sense. The NSL section of the Senate bill was one of the worst sections of the bill. I didn't like it then, and I don't like it now. But in the context of the larger package of reforms that were in the Senate bill, including the important changes to section 215 that I talked about earlier and the new time limit on ''sneak and peek'' search warrants that I will talk about in a moment, I was able to accept that NSL section even though I would have preferred additional reforms.

The argument has been made that after supporting a compromise package for its good parts, I guess the idea is I am supposed to accept a conference report that has only the bad parts of the package even though the good parts have been stripped out. That is just nonsense, and every Member of this chamber who has ever agreed to a compromise—and I must assume that includes every single one of us—knows it.

The other point I want to emphasize here is that the Senate bill was passed before the Post reported about the use of NSLs and the difficulties that the gag rule poses for businesses that feel they are being unfairly burdened by them. At the very least, I would think that a sunset of the NSL authorities would be justified to ensure that Congress has the opportunity to take a close look at such a broad power. But the conferees and the White House refused to make that change. Nor would they budge at all on the absurdly difficult standard of review, the so-called conclusive presumption; in fact, the White House insisted on repeating it in the context of judicial review of section 215 gag orders.

This points out a real problem I have with the White House deal. In our letter in December, my colleagues and I, Democratic and Republican, complained about the unfair standard for judicial review of the gag order in connection to NSLs. So how can the supporters of this deal argue that applying that same standard to challenges to the gag rule for section 215 orders is an improvement? A standard that was unacceptable in December has somehow miraculously been transformed into a meaningful concession. That is just spin. It doesn't pass the laugh test.

I suspect that the NSL power is something that the administration is zealously guarding because it is one area where there is almost no judicial involvement or oversight. It is the last refuge for those who want virtually unlimited Governmental power in intelligence investigations. And that is why the Congress should be very concerned and very insistent on making the reasonable changes we have suggested.

I next want to address ''sneak and peek'' searches. This is another area where the conference report departs from the Senate's compromise language, another area where the White House deal makes no changes whatsoever, and another reason that I must oppose the conference report.

When we debated the PATRIOT Act in December, the senior Senator from Pennsylvania made what seems on the surface to be an appealing argument. He said that the Senate bill requires notice of a sneak and peek search within 7 days of the search, and the House said 180 days. The conference compromised on 30 days. ''That's a good result,'' he says. ''They came down 150 days, we went up only 23. What's wrong with that?''

Let me take a little time to put this issue in context and explain why this isn't just a numbers game—an important constitutional right is at stake.

One of the most fundamental protections in the Bill of Rights is the fourth amendment's guarantee that all citizens have the right to ''be secure in their persons, houses, papers, and effects'' against ''unreasonable searches and seizures.'' The idea that the Government cannot enter our homes improperly is a bedrock principle for Americans, and rightly so. The fourth amendment has a rich history and includes in its ambit some very important requirements for searches. One is the requirement that a search be conducted pursuant to a warrant. The Constitution specifically requires that a warrant for a search be issued only where there is probable cause and that the warrant specifically describe the place to be searched and the persons or things to be seized.

Why does the Constitution require that particular description? For one thing, that description becomes a limit on what can be searched or what can be seized. If the magistrate approves a warrant to search someone's home and the police show up at the person's business, that search is not valid. If the warrant authorizes a search at a particular address, and the police take it next door, they have no right to enter that house. But of course, there is no opportunity to point out that the warrant is inadequate unless that warrant is handed to someone at the premises. If there is no one present to receive the warrant, and the search must be carried out immediately, most warrants require that they be left behind at the premises that were searched. Notice of the search is part of the standard Fourth Amendment protection. It's what gives meaning, or maybe we should say ''teeth,'' to the Constitution's requirement of a warrant and a particular description of the place to be searched and the persons or items to be seized.

Over the years, the courts have had to deal with Government claims that the circumstances of a particular investigation require a search without notifying the target prior to carrying out the search. In some cases, giving notice would compromise the success of the search by leading to the flight of the suspect or the destruction of evidence. The two leading cases on so-called surreptitious entry, or what have come to be known as ''sneak and peek'' searches, came to very similar conclusions. Notice of criminal search warrants could be delayed but not omitted entirely. Both the Second Circuit in U.S. v. Villegas and the Ninth Circuit in U.S. v. Freitas held that a sneak and peek warrant must provide that notice of the search will be given within 7 days, unless extended by the court. Listen to what the Freitas court said about such searches:

> We take this position because surreptitious searches and seizures of intangibles strike at the very heart of the interests protected by the Fourth Amendment. The mere thought of strangers walking through and visually examining the center of our privacy interest, our home, arouses our passion for freedom as does nothing else. That passion, the true source of the Fourth Amendment, demands that surreptitious entries be closely circumscribed.

So when defenders of the PATRIOT Act say that sneak and peek searches were commonly approved by courts prior to the PATRIOT Act, they are partially correct. Some courts permitted secret searches in very limited circumstances, but they also recognized the need for prompt notice after the search unless a reason to continue to delay notice was demonstrated. And they specifically said that notice had to occur within 7 en days.

Section 213 of the PATRIOT Act didn't get this part of the balance right. It allowed notice to be delayed for any reasonable length of time. Information provided by the administration about the use of this provision indicates that delays of months at a time are now becoming commonplace. Those are hardly the kind of delays that the courts had been allowing prior to the PATRIOT Act.

The sneak and peek power in the PATRIOT Act caused concern right from the start. And not just because of the lack of a time-limited notice requirement. The PATRIOT Act also broadened the justifications that the Government could give in order to obtain a sneak and peek warrant. It included

what came to be known as the ''catch-all'' provision, which allows the Government to avoid giving notice of a search if it would ''seriously jeopardize an investigation.'' Some think that that justification in some ways swallows the requirement of notice since most investigators would prefer not to give notice of a search and can easily argue that giving notice will hurt the investigation.

That is why it sounds to many like a catch-all provision.

Critics of the sneak and peek provision worked to fix both of the problems when they introduced the SAFE Act. First, in that bill, we tightened the standard for justifying a sneak and peek search to a limited set of circumstances—when advance notice would endanger life or property, or result in flight from prosecution, the intimidation of witnesses, or the destruction of evidence. Second, we required notice within 7 days, with an unlimited number of 21-day extensions if approved by the court.

The Senate bill, as we all know, was a compromise. It kept the catch-all provision as a justification for obtaining a sneak and peek warrant. Those of us who were concerned about that provision agreed to accept it in return for getting the 7-day notice requirement. And we accepted unlimited extensions of up to 90 days at a time. The key thing was prompt notice after the fact, or a court order that continuing to delay notice was justified.

That is the background to the numbers game that the Senator from Pennsylvania and other supporters of the conference report point to. They want credit for walking the House back from its outrageous position of 180 days, but they refuse to recognize that the sneak and peek provision still has the catch-all justification and unlimited 90-day extensions.

Here is the crucial question that they refuse to answer. What possible rationale is there for not requiring the Government to go back to a court within 7 days and demonstrate a need for continued secrecy? Why insist that the Government get 30 days free without getting an extension? Could it be that they think that the courts usually won't agree that continued secrecy is needed after the search is conducted, so they won't get the 90-day extension? If they have to go back to a court at some point, why not go back after 7 days rather than 30? From the point of view of the Government, I don't see the big deal. But from the point of view of someone whose house has been secretly searched, there is a big difference between 1 week and a month with regard to the time you are notified that some one came into your house and you had absolutely no idea about it.

Suppose, for example, that the Government actually searched the wrong house. As I mentioned, that's one of the reasons that notice is a fourth amendment requirement. The innocent owner of the place that had been searched might suspect that someone had broken in, might be living in fear that someone has a key or some other way to enter. Should we make that person wait a month to get an explanation rather than a week? Presumably, if the search revealed nothing, and especially if the Government realized the mistake and does not intend to apply for an extension, it will be no hardship, other than embarrassment, for notice to be given within 7 days.

That is why I'm not persuaded by the numbers game. The Senate bill was already a compromise on this very controversial provision. And there is no good reason not to adopt the Senate's provision. I have pointed this out repeatedly, and no one has ever come forward and explained why the Government can't come back to the court within 7 days of executing the search. Instead, they let the House get away with a negotiating tactic—by starting with 180 days, they can argue that 30 days is a big concession. But it certainly wasn't.

Let me put it to you this way: If the House had passed a provision that allowed for notice to be delayed for 1,000 days, would anyone be boasting about a compromise that requires notice within 100 days, more than 3 months? Would that be a persuasive argument? I don't think so. The House provision of 180 days was arguably worse than current law, which required notice ''within a reasonable time,'' because it creates a presumption that delaying notice for 180 days, 6 months, is reasonable. It was a bargaining ploy. The Senate version was what the courts had required prior to the PATRIOT Act. And it was itself a compromise because it leaves in place the catch-all provision for justifying the warrant in the first place. That is why I believe the conference report on the sneak and peek provision is inadequate and must be opposed. And the fact that this so-called deal with the White House does not address this issue is yet another reason why I see no reason why I, or anyone, should change their position on this.

Let me make one final point about sneak and peek warrants. Don't be fooled for a minute into believing that this power is needed to investigate terrorism or espionage. It's not. Section 213 is a criminal provision that applies in whatever kinds of criminal investigations the Government has undertaken. In fact, most sneak and peek warrants are issued for drug investigations. So why do I say that they aren't needed in terrorism investigations? Because FISA also can apply to those investigations. And FISA search warrants are always executed in secret, and never require notice. If you really don't want to give notice of a search in a terrorism investigation, you can get a FISA warrant. So any argument that limiting the sneak and peek power as we have proposed will interfere with sensitive terrorism investigations is a red herring.

I have spoken at some length about the provisions of this conference report that trouble me, and the ways in which the deal struck with the White House does not address those problems with the conference report. But to be fair, I should mention one aspect of the conference report that was better than a draft that circulated prior to the final signing of that report. The conference report includes 4-year sunsets on three of the most controversial provisions: roving wiretaps, the so-called ''library'' provision, and the ''lone wolf' provision of the Foreign Intelligence Surveillance Act. Previously, the sunsets on these provisions were at 7 years, and it is certainly an improvement to have reduced that number so that Congress can take another look at those provisions sooner.

I also want to acknowledge that the conference report creates new reporting requirements for some PATRIOT Act powers, including new reporting on roving wiretaps, section 215, ''sneak and peek'' search warrants, and national security letters. There are also new requirements that the Inspector General of the Department of Justice conduct audits of the Government's use of national security letters and section 215. In addition, the conference report includes some other useful oversight provisions relating to FISA. It requires that Congress be informed about the FISA Court's rules and procedures and about the use of emergency authorities under FISA, and gives the Senate Judiciary Committee access to certain FISA reporting that currently only goes to the Intelligence Committee. I am also glad to see that it requires the Department of Justice to report to us on its data mining activities.

But adding sunsets and new reporting and oversight requirements only gets you so far. The conference report, as it would be modified by S. 2271, remains deeply flawed. I appreciate sunsets and reporting, and I know that the senior Senator from Pennsylvania worked hard to ensure they were included, but these improvements are not enough. Sunsetting bad law in another 4 years is not good enough. Simply requiring reporting on the Government's use of these overly expansive tools does not ensure that they will not be abused. We must make substantive changes to the law, not just improve oversight. This is our chance, and we cannot let it pass by.

Trust of Government cannot be cannot be demanded or asserted or assumed; it must be earned. And this administration has not earned our trust. It has fought reasonable safeguards for constitutional freedoms every step of the way. It has resisted congressional oversight and often misled the public about its use of the PATRIOT Act. We know now that it has even authorized illegal wiretaps and is making misleading legal arguments to try to justify them. We sunsetted 16 provisions of the original PATRIOT Act precisely so we could revisit them and make necessary changes—to make improvements based on the experience of 4

years with the Act, and with the careful deliberation and debate that, quite frankly, was missing 4 years ago. This process of reauthorization has certainly generated debate, but if we pass the conference report, even with the few White House modifications, in some ways we will have wasted a lot of time and missed our opportunity to finally get it right.

The American people will not be happy with us for missing that chance. They will not accept our explanation that we decided to wait another 4 years before really addressing their concerns. It appears that is now an inevitable outcome. But I am prepared to keep fighting for as long as it takes to get this right. For now, I urge my colleagues to oppose the motion to proceed to this legislation to implement the White House deal. We can do better than these minor cosmetic changes.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. MURKOWSKI). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

(The remarks of Mr. ALLEN pertaining to the introduction of S.J. Res. 31 are located in today's RECORD under ''Submission of Concurrent and Senate Resolutions.'')

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

The PRESIDING OFFICER (Mr. THUNE). The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. DORGAN. Mr. President, I understand the current business. I ask unanimous consent that my presentation appear in the RECORD as in Morning Business.

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

(The remarks of Mr. DORGAN are printed in today's RECORD under ''Morning Business.'')

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

The PRESIDING OFFICER (Mr. SUNUNU). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. SESSIONS. Mr. President, we are again enduring another filibuster of the PATRIOT Act. It is frustrating to me in the sense that I believe, properly understood, the PATRIOT Act provides tremendous protections to the people of the United States which don't now exist, and that those protections are crafted in a way which is sensitive to and consistent with the great civil liberties which we all cherish.

Two months ago, in December, we had a long debate, and since then, we have had to extend the PATRIOT Act for some time without reauthorizing it. Leaders have met and worked and dealt with some concerns. I know four Republican Senators who had concerns, and their concerns have been met. I think others also have likewise felt their concerns have been met. They are not large changes, but it made the Senators happy and they feel comfortable with voting for the bill today. That is good news. It is time to pass it.

I believe the American people expect that we will be able to have an up-or-down vote on this legislation. That has been blocked. There has been a majority in favor of the legislation for some time.

To get to cloture, we have to use 30 hours of debate, which will probably last throughout the day and into tomorrow. We will get there this time, I am confident. When we do, we will have a fairly strong vote, I believe, in favor of the legislation. We certainly should.

I urge my colleagues to work with us as best they can to move this forward in an expeditious way that allows for the up-or-down vote that is necessary.

I have talked about it a number of times, but I thought today I would focus on the question of why the PATRIOT Act matters, or are these just academic issues? Are they issues of an FBI agent wanting to violate our civil rights and spy on us? Some group in Government out here with black helicopters trying to find out what people are doing and then take away our liberties?

That is a great exaggeration. This is not what is at stake here. This bill is consistent with our great American liberties. It has not been held unconstitutional. Overwhelmingly, the powers given in this act are powers that law enforcement officers have had for years. They have been able to utilize them to catch burglars, murderers, drug dealers, and the like.

The local district attorney can subpoena my library records, medical records, and bank records. The Drug Enforcement Administration Act by administrative subpoena—not even a grand jury subpoena—can subpoena my telephone toll records. That has always been the law. That is the law today. We have provisions that allow our investigators to do that for terrorists. One would think somehow we are ripping the Constitution into shreds, that this is somehow a threat to our fundamental liberties. It is not so.

Let me point out I had the privilege, for over 15 years, to be a Federal prosecutor and work on a daily basis with FBI agents, DEA agents, and customs agents. These are men and women who love their country. They believe in our law. They follow the law. In my remarks, I will demonstrate these agents, unlike what is seen on television, follow what we tell them to do. If they do not follow what we tell them to do, they can be prosecuted, removed from the FBI, the DEA or the Federal agency for which they work. In fact, they know that and they remain disciplined and men and women of integrity who follow the law. Therefore, do not think, when we pass restrictions on how they do their work, that it is not going to be followed; that if it is a really big case, such as on ''Kojak,'' that they will go in and kick in the door without a warrant. That does not happen.

In 2001, we know at least 19 foreign terrorists were able to enter this country and plan and execute the most devastating terrorist attack this Nation has ever seen. The reasons the United States and terror investigators, the people we had out there at the time—FBI, CIA, and others—failed to uncover and stop the September 11 conspiracy have now been explored carefully by a joint inquiry of the House and Senate Intelligence Committees and other congressional committees and commissions, as well as the 9/11 Commission. These very commissions and inquiries have reviewed, in painstaking detail, the various pre-September 11 investigations that were out there—investigations, inquiries, preliminary inquiries—gathering information that raised people's suspicions about terrorism.

These investigations could have but unfortunately did not stop the September 11 plot. We have seen how close the investigators came to discovering or disrupting the conspiracy, only to repeatedly reach dead ends or obstructions to their investigations.

Those are the facts they found. Some of the most important pre-September 11 investigations, we know exactly what stood in the way of a successful investigation. It was the laws Congress wrote, seemingly minor, but, nevertheless, with substantive gaps in our antiterror laws, preventing the FBI from fully exporting the best leads it had on the al-Qaida conspiracy. One pre-September 11 investigation, in particular, came tantalizingly close to substantially disrupting or even stopping the terrorist plot. But this investigation was blocked by a flaw in our antiterror laws that has since been corrected by this PATRIOT Act being filibustered today.

This investigation involved Khalid Al Midhar. Midhar was one of the eventual suicide attackers on the American Airlines flight 77 which was flown into the Pentagon across the river from here, killing 58 passengers on the plane, the crew, and 125 people at the Pentagon. Patriots all.

An account of a pre-September 11 investigation of Midhar is provided in the 9/11 Commission Staff Statement No. 10. The 9/11 Commission looked at what information we did have prior to these events, and this is what the staff statement notes:

During the summer of 2001, a CIA agent asked an FBI official [a CIA agent responsible for foreign intelligence talked with an FBI official responsible for the security and law enforcement international] to review all of the materials from a Al Qaeda meeting in Kuala Lumpur, Malaysia one more time. The FBI official began her work on July 24th prior to September 11, 2001. That day she found the cable reporting that Khalid Al Mihdhar had a visa to the United States. A week later she found the cable reporting that Mihdhar's visa application—what was later discovered to be his first application—listed New York as his destination . . . The FBI official grasped the significance of this information.

The FBI official and an FBI analyst working on the case promptly met with INS representatives at the FBI Headquarters. On August 22nd, INS told them that Mihdhar had entered the United States on January 15t, 2000, and again on July 4, 2001 . . . The FBI agents decided that if Mihdhar was in the United States, he should be found.

At this point, the investigation of Khalid Al Midhar came up against the infamous legal ''wall'' that separated criminal and intelligence investigations at the time.

The Joint Inquiry Report of the House and Senate Intelligence Committees describes what happens next:

Even in late August 2001 when CIA told FBI, State, INS, and Customs that Khalid al-Mihdhar, Nawaf al-Yazmi, and two other ''Bin Laden-related individuals'' were in the United States, FBI Headquarters refused to accede to the New York field office recommendation that a criminal investigation be opened, which might allow greater resources to be dedicated to the search for the future hijackers . . .

The FBI has attorneys. They read our statutes, they read the laws we pass, they tell the agents what they can and cannot do because they are committed to complying with the laws we place upon them.

The FBI attorneys took the position that criminal investigators CANNOT be involved and that criminal information discovered in the intelligence case would be ''passed over the wall'' according to procedures. An agent in the FBI's New York field office responded by an e-mail, saying—

And I will quote the agent in a second but the scene is this: The FBI field office in New York concluded, after obtaining information from CIA that this individual, one of the hijackers, was a dangerous person and should be found. And the FBI field office—it is a big deal to be a special agent in charge of the New York field office, the biggest one in the country—recommended to FBI headquarters that we act on it. The FBI lawyers read the laws we passed and said ''you cannot.'' This is what the agent in New York responded when he heard this, sent it by e-mail. See if this doesn't chill your spine a bit.

He said:

Whatever has happened to this, someday someone will die and, wall or not, the public will not understand why we were not more effective in throwing every resource we had at certain problems.

That was his reaction. It was a natural reaction.

How did we get this wall? It occurred in a spate of reform legislation after abuses of Watergate and the Frank Church committee hearings. They decided that in foreign intelligence—that is one thing, domestic is another—foreign intelligence does not always follow every rule. We ought to have a clear line between the FBI, which is over here in America, and we ought not give them information that the CIA had because they thought somehow this was going to deny us our civil liberties, which was not very clear thinking, in my view.

But these were good people. They were driven maybe by the politics of the time or what they thought was good at the time. They created this wall we have demolished with the PATRIOT Act—and good riddance it is. There is no sense in this.

The 9/11 Commission has reached the following conclusion about the effect the legal wall between criminal and intelligence investigations had on the pre-September 11 investigation of Khalid Al Midhar. This is what the 9/11 Commission concludes:

Many witnesses have suggested that even if Mihdhar had been found, there was nothing the agents could have done except follow him onto the airplane. We believe this is incorrect. Both Hazmi and Mihdhar could have been held for immigration violations or as material witnesses in the Cole bombing case.

This was our warship, the USS *Cole*, that was bombed by al-Qaida, killing a number of American sailors in Yemen; an attack on a warship of the United States by al-Qaida. What does it take to get our attention?

This report continues:

Investigation or interrogation of any of these individuals, and their travel and financial activities, also may have yielded evidence of connections to other participants in the 9/11 plot. In any case, the opportunity did not arise.

There was a realistic chance, had these rules not existed, rules that this PATRIOT Act eliminates, we would have been able to move forward with an investigation that had some prospect of actually preventing September 11 from occurring.

Some say, Jeff, you cannot say that for certain; and I am not saying it for certain, but I have been involved in investigations. You never know. You get a bit of information, you follow up on a lead or two, you get a search warrant, you surveil an activity, and all of a sudden you find that bit of evidence that takes you even further into an organization committed to a criminal activity or a terrorist plot you never knew existed. This is reality of law enforcement work today. We ask them every day to do this. And those investigating terrorist cases are giving their very heart and soul to it. They are trying every way possible, consistent with the law, not outside the law, to gather all the information they can to be successful.

So we know the PATRIOT Act was enacted too late to have aided in the pre-September 11 investigations, unfortunately. But it did raise our consciousness of the lack of wisdom on the reform legislation that was passed the year before—all with good intentions.

Let me mention another matter of a similar nature.

Another key pre-September 11 investigation was also blocked by a seemingly minor gap in the law. The case involves Minneapolis FBI agents' summer 2001 investigation of al-Qaida member Zacarias Moussaoui.

Hearings before the 9/11 Commission raised agonizing questions about the FBI's pursuit of Moussaoui. Commissioner Richard Ben-Veniste noted the possibility that the Moussaoui investigation could have allowed the United States to ''possibly disrupt the [9/11] plot.'' Commissioner Bob Kerrey, a former Member of this Senate, even suggested that with better use of the information gleaned from Moussaoui, the ''conspiracy would have been rolled up.''

Moussaoui was arrested by Minneapolis FBI agents several weeks before the 9/11 attacks. Do you remember that? He was arrested early that summer. Instructors at a Minnesota flight school became suspicious when Moussaoui, with little apparent knowledge of flying, asked to be taught how to pilot a 747. The instructors were concerned about it. They were on alert. They did what good citizens would do. Remember, this is before 9/11. But they were concerned about this oddity. They called the FBI in Minneapolis, which immediately suspected that Moussaoui might be a terrorist.

FBI agents opened an investigation of Moussaoui and sought a FISA that is the Foreign Intelligence Surveillance Court—national security warrant to search his belongings. But for 3 long weeks, the FBI agents were denied that FISA warrant. During that 3 weeks—you know the truth—the September 11 attack occurred.

After the attacks—and largely because of them the agents were then able to obtain an ''ordinary'' criminal warrant. So after the attacks, the agents were issued an ''ordinary'' criminal warrant to conduct the search. And when they conducted the search, his belongings then linked Moussaoui to two of the actual 9/11 hijackers and to a high-level organizer of the attacks who was later arrested in Pakistan.

The 9/11 Commissioners were right to ask whether more could have been done to pursue the case. This case was one of our best chances of stopping or disrupting the 9/11 attacks. Could more have been done? The best answer is probably no—based on the law that existed at that time.

The FBI agents were blocked from searching Moussaoui because of an outdated requirement of the 1978 FISA statute. Unfortunately, one of that statute's requirements was that the target of an investigation—if it were to be subject to a search under a FISA warrant, a foreign intelligence warrant—the agent had to have proof that he was not a lone-wolf terrorist, but he

must have been an agent of a foreign power or a known terrorist group. The law did not allow searches of apparent lone wolves, like Zacarias Moussaoui was thought to be at the time. They did not have the evidence to show otherwise.

So according to the FBI Director, the man in charge of the FBI, Robert Mueller—a former prosecutor of many years and a skilled lawyer—the gap in FISA probably would have prevented the FBI from using FISA against any of the September 11 hijackers. As the Director noted in his testimony before the Judiciary Committee:

> Prior to September 11, [of] the 19 or 20 hijackers . . . we had very little information as to any one of the individuals being associated with . . . a particular terrorist group.

So in other words, their lawyers in the FBI were saying: Well, you can't use the FISA. I know you want to. I know you have suspicions. And I know he looks like a terrorist. And we would like to search his belongings and see if he has any connection with any terrorist organization and maybe find out if they have any bombs or plans there. But you can't do it because we lack one little bit of proof. We can't prove he's connected to a terrorist group or a foreign nation. Sorry. Can't do it.

So the ''lone-wolf'' gap was fixed by the Intell reauthorization, and adopted as part of the PATRIOT Act. We need to reauthorize it and continue it into law.

What the various reports and commissions investigating the 9/11 attacks have shown us thus far is that where our antiterror laws are concerned, even seemingly little things, minor things—it might seem like they were OK at the time—can make a big difference, a life and death difference.

Before September 11, few would have thought that the lack of authority in FISA for the FBI to monitor and search lone-wolf terrorists might be decisive as to our ability to stop a major terrorist attack on U.S. soil. Indeed, that is true. We did not think about it. We did not think clearly about it.

And before September 11, though there was some attention to the problems posed by the legal wall between the intelligence-gathering agencies and the criminal investigative agencies, there was little sense of urgency to fix those matters. We accepted it. The FBI accepted it. It was the way you had to do business. You could not violate the law. I am sorry, you cannot investigate. You cannot participate with the CIA. Even though you may think he is a terrorist instigator, you cannot participate because there is a wall that the Congress created.

So at the time, these all seemed like legal technicalities—not real problems, the kind of problems that could lead to the deaths of almost 3,000 American citizens.

Today, we face the same challenge—recognizing why it is so important to fix small gaps in the law that can lead to large consequences and real-life disasters. Congress must not take the position that enough time has been passed since 9/11. Congress must not allow the information wall to be reconstructed by blocking the passage of the PATRIOT Act, or allow the tools we have given to our terrorism investigators by the PATRIOT Act to be taken away.

We must pass the PATRIOT Act reauthorization conference report. It is that simple. It permanently plugs most of the holes that we know existed in our terrorism laws. The report retains a few sunsets. I do not think they are necessary. I think they were good, sound changes in the law. But people are nervous that they might be abused, so they will automatically sunset if we do not extend them. OK, we will do that. If that will get some people more comfortable so they will pass this bill, we will do that.

And the report has a long list of additional civil liberties protections.

It is a compromise product that came out of our Judiciary Committee, I believe with a unanimous vote, and with a unanimous vote on the floor of the Senate, and went to conference. A few changes were made in conference. But where there were conflicts, overwhelmingly, the conflicts were decided in favor of the Senate product. And it was that product that finally hit the floor of the Senate in December. And we have had this filibuster going ever since. Hopefully, now we are in a position to end it.

I urge my colleagues to examine the nature of the PATRIOT Act as it is now configured. Read it carefully. Ask any questions you have. Make sure you understand what powers police have today in your hometowns all over America. And do not get confused that some of the things provided for might sound if—you listen to critics—as if they are new and far-reaching and utterly dangerous. They are part of everyday law enforcement—overwhelmingly, they are—and I believe are consistent with the highest commitment of American citizens to civil liberties.

I would also mention this. There are almost 3,000 people who are no longer with us today. They have zero civil liberties as a result of the most vicious and hateful attack on 9/11. That is not an academic matter. That is a fact. As that FBI agent said: Someday the American people are not going to understand how we were not able to intercept and investigate these groups.

Mr. President, I thank the Chair and yield the floor.

The PRESIDING OFFICER (Mr. COBURN). The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I appreciate the Senator from Alabama joining the debate about the PATRIOT Act. I am going to respond very briefly to his remarks because I know there are other Senators on the floor who wish to speak about other issues, and I will defer to them in a moment.

But the Senator complained that the Senate is enduring another filibuster on this issue. I suppose that is one way to characterize it. What I would characterize it as is those of us who have concerns about this bill are enduring again speech after speech that has absolutely nothing to do with the issues at hand. That is irrelevant to the concerns we have raised about the PATRIOT Act.

Throughout his speech, the Senator from Alabama talked about issues that are not about the concerns we have raised. In fact, again, we are subjected to this idea that somehow those of us who raise these concerns are not concerned about what happened to this Nation on 9/11, that we do not feel exactly as much as the Senator from Alabama the pain and the tragedy of the loss of those 3,000 lives.

Not a single concern I have raised about this bill would have anything to do with this Government's ability to crack down on people who are trying to attack this country. In fact, that is the whole point. All of the changes we seek are to try to make sure we distinguish those who are completely innocent and unrelated to the terrorists from those who, in fact, are involved in espionage or terrorism.

The Senator talks about academic issues. But these are not academic issues. The fact is, when he brings up anything specific, he is changing the subject. He is bringing up noncontroversial issues. He talks about this wall. I talked about this in my speech before: the wall between the CIA and FBI. No Member of this body disputes that wall needed to be taken down. The wall has been taken down. I do not want it to be put back up. That is not in controversy.

And virtually the entire speech by the Senator from Alabama was about specific issues—the Midhar case and the Moussaoui case. All of that part of his speech was about something that is not in controversy. If he wants to offer that as a bill right now to simply continue that provision, he can put me down as a cosponsor. So it is completely irrelevant to what we are discussing and what my concerns are at this point.

The Senator says that somehow people are running around saying that the FBI is kicking down people's doors without a warrant. Nobody ever said that. I understand how the sneak-and-peek provisions work. We have been on this issue for a while. We know that in sneak and peek there has to be a warrant.

The question there is not whether there are warrantless searches of people's homes. The question is, when somebody is allowed, through a judicial order and a warrant, to come into somebody's house when they do not get notice of it, how long somebody should have to endure the possibility that their home has been searched and they

do not get notice after the fact that somebody came into their house when they were not there. So again, the argument is entirely unrelated to the concern.

The concerns we have raised are important, but they are limited. I am going to insist in this debate that we debate the concerns that we have put forward.

Finally, Mr. President, I am amused by the Senator talking about how we passed a bill in the Judiciary Committee by a unanimous vote. You bet we did. The Senator from Alabama voted for it and I voted for it. The whole Senate did not oppose the bill. Now every single thing I have advocated to change in the PATRIOT Act, in terms of the product of this body, is what I am advocating today. The Senator is acting as if those are dangerous provisions. Well, he voted for them. He voted for the stronger standard on 215. He voted for 7 days on the sneak-and-peek provisions. So how can they be dangerous if the Senator from Alabama actually voted for those provisions with me in the Judiciary Committee?

These are not dangerous changes. These are not irresponsible changes. These are not changes that have anything to do with legitimate efforts to try to stop the terrorists.

I so thank the Senator. I always enjoy debating him. He is the one Senator who has come down here and engaged on this today. I appreciate that. But I wish the debate could be about the questions that have arisen having to do with notice issues in sneak and peek, whether there is going to be a stronger provision on national security letters, whether there is going to be a provision on library business records to make sure it is tied to terrorists. The only reason I am doing this has to do with those kinds of provisions, not the issues the Senator from Alabama raised on which I happen to, in large part, agree.

Mr. SESSIONS. If the Senator will yield, I have talked about the details of this bill and individual complaints the Senator has about this or that provision in some detail. I will do so again. At this point, what we are facing is a filibuster of the motion to proceed that impacts the entire legislation.

I would ask the Senator if the Senator remembers that when the bill came out of the Senate, it said there would be a 7-day notice if there were a sneak-and-peek search warrant. The House bill had 180 days before notice would be given. The conferees moved far to the side of the Senate and made it a 30-day notice. Is that the basis of the Senator's desire to filibuster this entire bill, the difference between 7 and 30 days, recognizing in this body we seldom get anything exactly as we want it?

Mr. FEINGOLD. Mr. President, if the Senator is asking me a question, I am happy to respond.

The PRESIDING OFFICER. The Senator from Wisconsin controls the time.

Mr. FEINGOLD. I spoke at some length this morning about this issue which I call the numbers game on the sneak and peek. Of course, the sneak-and-peek provision is not my only concern. There are four or five areas. But I am very concerned about the length of time that somebody does not get notice that the FBI has come into their home without their being aware of it and the idea that somehow, after very careful court decisions said there will be exceptions to the requirements of the fourth amendment for perhaps 7 days—that was the standard in the court decisions upon which these unusual sneak-and-peek provisions were based—then to somehow have it become reasonable to have a whole month, a 30-day period, strikes me as extreme.

The 7-day standard was not picked out of the air. The 7-day standard was based on those court decisions which made the unusual law, in terms of our history as a country in the prohibition against unreasonable searches and seizures—the 7 days was based on those court decisions. So, yes, 30 days, four times more, is unreasonable.

After the Government has come into somebody's home and they have had 7 days, why is it that they should not have to come back and get permission to do that for a longer period of time? What is the need for the Government to have 30 days to not tell somebody to do that, when you remember that the Senate version you and I both voted for had the 7-day period?

Mr. SESSIONS. Well, we all don't get exactly what we want, I say to the Senator, No. 1.

No. 2, under current law, the so-called sneak-and-peek search by which you can, if you are investigating a major criminal enterprise or a terrorist group, actually conduct a search without actually telling the person the day you conducted it, the courts allow you as much time as they choose to allow you, for the most part. Some courts may have said 7 days. I am not aware at all that is the law in this country. It is what the judge says. This sets the standard. It says 30 days, and then they have to be repeated after that.

We have a bill on the floor that is a matter of life and death. I would ask my colleague to be somewhat more amenable to the fact that he won a pretty good victory in conference but just didn't get everything he wanted in conference by going from the House version of 180 down to 30.

Mr. FEINGOLD. Mr. President, I could say: Gee, it went from 180 to 30. I could tell my constituents in Spooner, WI: Look, the Government is going to come into your home under a special circumstance when you are not around, and it might not have even been the right house, and we are making this exception for 7 days because of emergencies in important situations. You and I both agree in certain circumstances that might occur. But the idea that for a whole month, that for 30 days the Government of the United States of America can come into your home without telling you they have been there, even if they have made a mistake, and they have no responsibility to tell a completely innocent person they made a mistake, to me is serious business.

If the Senator could make a credible argument as to why it is important for the Government to have a whole month after this 7-day period or 3 more weeks after the 7-day period, it would be one thing. But nobody has even made the argument that it is important for the Government to have 30 days to conduct this search. It is essentially an unreasonable period of time. I think it is important. The erring here should be on the side of people's liberty. It should be on the side of people protecting their homes from unreasonable searches and seizures. It should not be: What is the problem here? The Senator should be happy he got something better than the House version. I don't accept that, as somebody who believes the fourth amendment still has meaning.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. FEINGOLD. I yield to the Senator from West Virginia.

Mr. BYRD. Would the Senator yield and let me make a few remarks?

Mr. FEINGOLD. Absolutely.

The PRESIDING OFFICER. Does the Senator yield his time?

Mr. FEINGOLD. I yield my time.

Mr. LEAHY. Mr. President, I don't want to interfere with the Senator. I see quite a few pages of remarks there. I don't want to interfere with that, but I understood the Senator from Virginia and the Senator from Arkansas were going to introduce legislation, to be followed by remarks of mine on the bill before us in my capacity as the ranking member of the Senate Judiciary Committee, which has jurisdiction over this piece of legislation. My remarks will only be 5 or 6 minutes, but I wish to make them now or as soon as the Senators from Virginia and Arkansas have finished.

Mr. WARNER. Mr. President, there had been an informal agreement among colleagues, subject to the Senator who is principally on the floor at this point in time—and I will let him speak for himself—that we were going to introduce a bill. It would take 4 or 5 minutes for my remarks and 4 or 5 for the Senator from Arkansas. We were intending to do that at the conclusion of the colloquy between Senators FEINGOLD and SESSIONS.

Am I correct on that, the Senator had indicated that we could proceed?

Mr. FEINGOLD. Certainly, I had no objection to that.

The PRESIDING OFFICER. There is no recognized time agreement by the Chair at this time.

Mr. WARNER. Then I make a unanimous consent request that the Senator from Arkansas and I have 15 minutes equally divided, to be followed by Senator LEAHY for such time as he may

need and then the distinguished Senator from West Virginia.

The PRESIDING OFFICER. Is there objection to the unanimous consent request?

Mr. BYRD. Mr. President, reserving the right to object—I do not intend to object—I need to complete my remarks by 4:35. I have about 20 minutes here.

Mr. WARNER. Then I revise the request. The Senator from Arkansas and I can drop to, say, 10 minutes, and 5 minutes for the Senator from Vermont. Well, let's drop it down to 8 minutes——

Mr. LEAHY. I would need about 6 minutes. And that is cutting down a half-hour speech to accommodate the Senator from West Virginia, but I have been here for a couple hours ready to give this speech.

Mr. BYRD. Mr. President, I have waited many hours here many times. I never make a fuss about it. I will just leave the floor and——

Mr. WARNER. Mr. President, before the Senator leaves, what amount of time would the senior Senator from West Virginia like?

Mr. BYRD. I have 61 pages, large type. But that will take about 20 minutes—15, I think.

Mr. LEAHY. I have 5 or 6 pages of large type.

Mr. BYRD. My problem is, I need to get through by 4:30 or 4:35.

Mr. WARNER. Mr. President, I would suggest to my distinguished colleague from Arkansas, recognizing that Senator BYRD has an extenuating circumstance he has to take care of, I would be perfectly willing to step aside and regain into the queue following the Senator.

Mr. BYRD. The Senator is more than generous and more than kind.

Mr. LEAHY. The understanding is that I will be done by 4:15 to accommodate the Senator from West Virginia.

Mr. FEINGOLD. Mr. President, reserving the right to object, I ask to be recognized at the completion of the Senator's speech.

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

The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, last week, the Judiciary Committee held an important hearing. That hearing should be the beginning of the process of congressional oversight into what has been called ''the President's program.'' This is a domestic spying program into emails and telephone calls of Americans without a judge's approval, apparently conducted by the National Security Agency. Having participated in the hearing and reviewed the transcript of the Attorney General's testimony, I understand the fear that this administration is engaged in an elaborate cover-up of illegality. I urge them to come clean with us and the American people.

Perhaps their recent change of course and briefings with the full Intelligence Committees of the Senate and House will be a start. We need the whole truth not self-serving rationalizations. Since our hearing the Bush administration has had to adjust its course. That is good. They have had to acknowledge that they cannot simply ignore Congress and keep us in the dark about this illegal spying program. The classified briefings of the Intelligence Committees are a first step but cannot be used to cover up the facts through secrecy and arbitrary limitations. That is unacceptable. This domestic spying program has raised serious concern, not only among Democrats and Republicans here in Congress, but also among the Federal judges providing oversight over terrorist surveillance and even high-ranking Justice Department officials.

I commend Chairman SPECTER for beginning this investigation. He and I have a long history of conducting vigorous bipartisan oversight investigations. If the Senate is to serve its constitutional role as a real check on the Executive, thoroughgoing oversight is essential. Today, Chairman SPECTER has announced a second Judiciary Committee hearing will be held on February 28. We expect by then to have received answers to the written questions that have already been sent to the Attorney General.

The question facing us is not whether the Government should have all the tools it needs to protect the American people. Of course it should. The terrorist threat to America's security remains very real, and it is vital that we be armed with the tools needed to protect Americans' security. That is why I coauthored the PATRIOT Act 5 years ago. That is why we have amended the Foreign Intelligence Surveillance Act five times since 9/11 to provide more flexibility.

And that is why within days of the despicable attacks we passed the Authorization for the Use of Military Force on September 14, 2001, to send the United States Armed Forces into Afghanistan to get those who planned and carried out the vicious attacks on September 11.

We all agree that we should be wiretapping al-Qaida terrorists. Congress has given the President authority to wiretap legally, with checks to guard against abuses when Americans' conversations and email are being monitored. But instead, the President has chosen to proceed outside the law, without those safeguards. He has done so in a way that is illegal and illogical. It remains confusing that the Attorney General testified last week that the Bush administration has limited ''the President's program'' of illegal wire taps to calls with an international component.

The administration's rationale is not limited to calls and emails with an international component or to know al-Qaida operatives.

It sounded at our hearing as if what the Bush Attorney General and former White House counsel was saying is that this particular ''program'' is limited because they were afraid of public outrage. The Attorney General said as much to Senator KOHL and confirmed to Senator BIDEN that the Bush administration does not suggest that the President's powers are limited by the Constitution to foreign calls. Their descriptions of the President's program seem to have more to do with public relations than anything else. It was even branded with a new name in the last few days after it has been known for years as simply ''the President's program.''

Senator FEINSTEIN was right to observe after the Attorney General dodged and weaved and would not directly answer her questions: ''I can only believe—and this is my honest view—that this program is much bigger and much broader than you want anyone to know.'' The Attorney General's strenuous efforts to limit the hearing to ''those facts the President has publicly confirmed'' and ''the program that I am here testifying about today'' suggest that all of us must be skeptical about the secret games the Attorney General was playing through controlling the definition of ''the program'' to include only what he understood to exist at the beginning of last week. Senator FEINSTEIN was not fooled. None of us should be. Such limiting definitions are what the Bush Administration used to redefine ''torture'' in order to say that we do not engage in ''torture'' as they redefined it. These are the word games of coverup and deception. It is not al-Qaida surprised that our Government eavesdrops on its telephone calls and emails. Al-Qaida knows that we eavesdrop and wiretap. It is the American people who are surprised and deceived by the President's program of secret surveillance on them without a judge's approval for the last 5 years—especially, after the Attorney General, the Justice Department, the head of the NSA and the President have all reassured the American people over and over that their rights are being respected—when they are not.

I wish the President had effectively utilized the authority Congress did grant in the Authorization for the Use of Military Force in September 2001 to get Osama bin Laden and those responsible for the terrible attacks on September 11. That resolution was what it said it was, authorization to send troops to Afghanistan to get those responsible for 9/11. President Bush should have gotten Osama bin Laden when Congress authorized him to use our military might against al-Qaida in 2001 in Afghanistan. Instead of pursuing him to the end, he pulled our best forces out of the fight and diverted them to preparing for his invasion of Iraq.

Last week the Attorney General left key questions unanswered and left impressions that are chilling. Under his approach, there is no limit to the power the President could claim for so long as we face a threat of terrorism.

That is a real threat, which we have long faced and will continue to face for years if not decades toe. The Attorney General's testimony only hinted at the full dimensions of the Bush administration's illegality. He would not reassure us that Americans' domestic calls, emails, or first class mail have not been illegally spied upon.

He sought to choose his words carefully to say that he was only willing to speak about the President's ''program'' as it existed that day. That means we do not yet know the full dimensions of the program as it has evolved over time from 2001 to today. That means we do not know what other illegal activities the Bush administration is still endeavoring to hide from us.

Along with other Senators I asked about the lack of any limit to the legal rationale the Bush administration has embraced. Their rationalization for their actions is rationalization for any action. Under their view of the President's power, he can order houses and businesses searched without a warrant. Americans can be detained indefinitely. Detainees can be tortured. Property could be seized. Their rational is a prescription for lawlessness and the opposite of the rule of law.

Regrettably, the Attorney General's testimony last week left much to be desired. He did not provide convincing answers to basic questions, relevant information or the relevant underlying documents. Facts are a dangerous thing in a coverup. They are seeking to rewrite history and the law and control the facts that Congress can know.

The Bush administration refusal to provide the contemporaneous evidence of what the Congress and the Bush administration were indicating to each other regarding what the Authorization for the Use of Military Force was intended to mean, speaks volumes. Does anyone think that if they had any evidence in support of their after-the-fact rationalization they would hesitate to provide it, to trumpet it from the highest media mountain? Of course not.

Their failure to provide the information we asked for is not based on any claim of privilege, nor could it be. It is just a deafening, damning silence. So what is so secret about precisely when they came to this legal view, this rationalization of their conduct? Could it have come after the illegal conduct had been initiated? Could it have come after the President sought to immunize and sanitize the illegal conduct? Could it have come months or years later than the impression Attorney General Gonzales is attempting to create? Is that why the Bush administration is also refusing to provide to us the formal legal opinions of our Government, the binding opinions of the Office of Legal Counsel from 2001 and 2004 that we have also requested? Would review of those opinions show that the after-the-fact legal rationalizations changed over time and in 2001 were not those that the Attorney General has repackaged for public consumption in their current public relations campaign? Now that we know of the existence of the years-old secret domestic spying program that included the warrantless wiretapping of thousands of Americans, the Bush administration says that we should just trust them. That is a blind trust this administration has not earned. We have seen this administration's infamous and short-lived ''Total Information Awareness'' program and know how disastrous the FBI's Carnivore and Trilogy computer programs have been.

I have read recent reports of a secret Pentagon database containing information on a wide cross-section of ordinary Americans, including Quakers meeting in Florida and Vermont, and have gotten no satisfactory explanation of the Defense Department's Counterintelligence Field Activities that spy on law-abiding Americans. I read about a secret Homeland Security database and datamining activities, as well. Today we read about another database with the names of more than 325,000 terrorists but we do not know how many are Americans, how many are listed incorrectly or how the mistakes will be corrected.

There are new and disturbing reports that the Defense Department and the FBI have been monitoring U.S. advocacy groups working on behalf of civil rights or against the continuing occupation of Iraq.

This is all too reminiscent of the dark days when a Republican President compiled enemies lists and eavesdropped on political opponents and broke into doctors offices and used the vast power of the executive branch to violate the constitutional rights of Americans. That President resigned in disgrace after articles of impeachment were reported in the House of Representatives.

I was first elected to the Senate in the aftermath of Watergate and the White House ''plumbers'' and the illegality that led to the impeachment inquiry of President Nixon. The Foreign Intelligence Surveillance Act was passed in 1978 as part of the reform and reaction to those abuses. It was enacted after decades of abuses by the Executive, including the wiretapping of Dr. Martin Luther King, Jr., and other political opponents of earlier Government officials.

It was enacted after the White House ''horrors'' of the Nixon years, during which another President asserted that whatever he did was legal because he was the President. The law has been extensively updated in accordance with the Bush administration's requests in the aftermath of 9/11 and has been modified further in the last 4 years. It is the governing law. The rule of law and freedoms we enjoy as Americans are principles upon which this Nation was founded and what we are defending and fighting for abroad. This type of covert spying on American citizens and targeted groups on American soil betrays those principles and it is unacceptable.

What happens to the rule of law if those in power abuse it and only adhere to it selectively? What happens to our liberties when the government decides it would rather not follow the rules designed to protect our rights? What happens is that the terrorists are allowed to achieve a victory they could never achieve on the battlefield. We must not be intimidated into abandoning our fundamental values and treasured freedoms. We cannot let them scare us into giving up what defines us as Americans.

There can be no accountability unless the Republican Congress begins to do its job and joins with us to demand real oversight and real answers. Senators take an oath of office, too. We swear to support and defend the Constitution of the United States, to bear true faith and allegiance to it, and to faithfully discharge our duties so help us God. Let each Senator fulfill that pledge and the Senate can resume its intended place in our democracy.

Let us protect our national security and the national heritage of liberty for which so many have given so much.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Vermont for his characteristic kindness and courtesy. I thank the distinguished Senator who has been alone in opposing this act in the beginning, at a time when I wish I had voted as he did.

In June 2004, 10 peace activists outside of Halliburton, Inc., in Houston gathered to protest the company's war profiteering. They wore paper hats and were handing out peanut butter and jelly sandwiches, calling attention to Halliburton's overcharging on a food contract for American troops in Iraq.

Unbeknownst to them, they were being watched. U.S. Army personnel at the top secret Counterintelligence Field Activity, or CIFA, saw the protest as a potential threat to national security.

CIFA was created 3 years ago by the Defense Department. Its official role is forced protection; that is, tracking threat and terrorist plots against military installations and personnel inside the United States. In 2003, then Deputy Defense Secretary Paul Wolfowitz authorized a fact-gathering operation code named TALON, which stands for Threat and Local Observation Notice, which would collect raw information about suspicious incidents and feed it to CIFA.

In the case of the ''peanut butter'' demonstration, the Army wrote a report on the activity and stored it where? In its files. Newsweek magazine has reported that some TALON reports may have contained information on U.S. citizens that has been retained in Pentagon files. A senior Pentagon official has admitted that the names of these U.S. citizens could number in the thousands. Is this where we are heading? Is this where we are heading in

this land of the free? Are secret Government programs that spy on American citizens proliferating? The question is not, is Big Brother watching? The question is, how many big brothers have we?

Ever since the New York Times revealed that President George W. Bush has personally authorized surveillance of American citizens without obtaining a warrant, I have become increasingly concerned about dangers to the people's liberty. I believe that both current law and the Constitution may have been violated, not just once, not twice, but many times, and in ways that the Congress and the American people may never know because of this White House and its penchant for control and secrecy.

We cannot continue to claim we are a nation of laws and not of men if our laws, and indeed even the Constitution of the United States itself, may be summarily breached because of some determination of expediency or because the President says, ''Trust me.''

The Fourth Amendment reads clearly:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Congress has already granted the executive branch rather extraordinary authority with changes in the Foreign Intelligence Surveillance Act that allow the Government 72 hours after surveillance has begun to apply for a warrant. If this surveillance program is what the President says it is, a program to eavesdrop upon known terrorists in other countries who are conversing with Americans, then there should be no difficulty in obtaining a warrant within 72 hours. One might be tempted to suspect that the real reason the President authorized warrantless surveillance is because there is no need to have to bother with the inconveniences of probable cause. Without probable cause as a condition of spying on American citizens, the National Security Agency could, and can, under this President's direction, spy on anyone, and for any reason.

How do you like that? How about that? We have only the President's word, his ''trust me,'' to protect the privacy of the law-abiding citizens of this country. One must be especially wary of an administration that seems to feel that what it judges to be a good end always justifies any means. It is, in fact, not only illegal under our system, but it is morally reprehensible to spy on citizens without probable cause of wrongdoing.

When such practices are sanctioned by our own President, what is the message we are sending to other countries that the United States is trying to convince to adopt our system? It must be painfully obvious that a President who can spy on any citizen is very unlike the model of democracy the administration is trying to sell abroad.

In the name of ''fighting terror,'' are we to sacrifice every freedom to a President's demand? How far are we to go? Can a President order warrantless, house-to-house searches of a neighborhood where he suspects a terrorist may be hiding? Can he impose new restrictions on what can be printed, what can be broadcast, what can be uttered privately because of some perceived threat—perceived by him—to national security? Laughable thoughts? I think not.

This administration has so traumatized the people of this Nation, and many in the Congress, that some will swallow whole whatever rubbish that is spewed from this White House, as long as it is in some tenuous way connected to the so-called war on terror. And the phrase ''war on terror,'' while catchy, certainly is a misnomer. Terror is a tactic used by all manner of violent organizations to achieve their goal. This has been around since time began and will likely be with us until the last day of planet Earth.

We were attacked by bin Laden and by his organization, al-Qaida. If anything, what we are engaged in should more properly be called a war on the al-Qaida network. But that is too limiting for an administration that loves power as much as this one. A war on the al-Qaida network might conceivably be over someday. A war on the al-Qaida network might have achievable, measurable objectives, and it would be less able to be used as a rationale for almost any Government action. It would be harder to periodically traumatize the U.S. public, thereby justifying a reason for stamping ''secret'' on far too many Government programs and activities.

Why hasn't Congress been thoroughly briefed on the President's secret eavesdropping program, or on other secret domestic monitoring programs run by the Pentagon or other Government entities? Is it because keeping official secrets prevents annoying congressional oversight? Revealing this program in its entirety to too many Members of Congress could certainly have unmasked its probable illegality at a much earlier date, and may have allowed Members of Congress to pry information out of the White House that the Senate Judiciary Committee could not pry out of Attorney General Gonzales, who seemed generally confused about for whom he works—the public or his old boss, the President.

Attorney General Gonzales refused to divulge whether purely domestic communications have also been caught up in this warrantless surveillance, and he refused to assure the Senate Judiciary Committee and the American public that the administration has not deliberately tapped Americans' telephone calls and computers or searched their homes without warrants. Nor would he reveal whether even a single arrest has resulted from the program.

What about the first amendment? What about the chilling effect that warrantless eavesdropping is already having on those law-abiding American citizens who may not support the war in Iraq, or who may simply communicate with friends or relatives overseas? Eventually, the feeling that no conversation is private will cause perfectly innocent people to think carefully before they candidly express opinions or even say something in jest.

Already we have heard suggestions that freedom of the press should be subject to new restrictions. Who among us can feel comfortable knowing that the National Security Agency has been operating with an expansive view of its role since 2001, forwarding wholesale information from foreign intelligence communication intercepts involving American citizens, including the names of individuals to the FBI, in a departure from past practices, and tapping some of the country's main telecommunication arteries in order to trace and analyze information?

The administration could have come to Congress to address any aspects of the FISA law in the revised PATRIOT Act which the administration proposed, but they did not, probably because they wished the completely unfettered power to do whatever they pleased, the laws and the Constitution be damned.

I plead with the American public to tune in to what is happening in this country. Please forget the political party with which you may usually be associated and, instead, think about the right of due process, the presumption of innocence, and the right to a private life. Forget the now tired political spin that if one does not support warrantless spying, then one may be less than patriotic.

Focus on what is happening to truth in this country and then read President Bush's statement to a Buffalo, NY, audience on April 24, 2004:

> Any time you hear the United States Government talking about wiretap, it requires—a wiretap requires a court order. Nothing has changed, by the way. When we are talking about chasing down terrorists, we are talking about getting a court order before we do so.

That statement is false, and the President knew it was false when he made it because he had authorized the Government to wiretap without a court order shortly after the 2001 attacks.

This President, in my judgment, may have broken the law and most certainly has violated the spirit of the Constitution and the public trust.

Yet I hear strange comments coming from some Members of Congress to the effect that, well, if the President has broken the law, let's just change the law. That is tantamount to saying that whatever the President does is legal, and the last time we heard that claim was from the White House of Richard M. Nixon. Congress must rise to the occasion and demand answers to the serious questions surrounding warrantless

spying. And Congress must stop being spooked by false charges that unless it goes along in blind obedience with every outrageous violation of the separation of powers, it is soft on terrorism. Perhaps we can take courage from the American Bar Association which, on Monday, February 13, denounced President Bush's warrantless surveillance and expressed the view that he had exceeded his constitutional powers.

There is a need for a thorough investigation of all of our domestic spying programs. We have to know what is being done by whom and to whom. We need to know if the Federal Intelligence Surveillance Act has been breached and if the Constitutional rights of thousands of Americans have been violated without cause. The question is: Can the Congress, under control of the President's political party, conduct the type of thorough, far-ranging investigation which is necessary. It is absolutely essential that Congress try because it is vital to at least attempt the proper restoration of the checks and balances. Unfortunately, in a Congressional election year, the effort will most likely be seriously hampered by politics. In fact, today's Washington Post reports that an all-out White House lobbying campaign has dramatically slowed the congressional probe of NSA spying and may kill it.

I want to know how many Americans have been spied upon. Yes, I want to know how it is determined which individuals are monitored and who makes such determinations. Yes, I want to know if the telecommunications industry is involved in a massive screening of the domestic telephone calls of ordinary Americans like you and me. I want to know if the U.S. Post Office is involved. I want to know, and the American people deserve to know, if the law has been broken and the Constitution has been breached.

Historian Lord Acton once observed that:

> Everything secret degenerates, even the administration of justice; nothing is safe that does not show how it can bear discussion and publicity.

The culture of secrecy, which has deepened since the attacks on September 11, has presented this Nation with an awful dilemma. In order to protect this open society, are we to believe that measures must be taken that in insidious and unconstitutional ways close it down? I believe that the answer must be an emphatic ''no.''

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WARNER. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. FEINGOLD. Mr. President, I ask unanimous consent to be recognized at the conclusion of the remarks of the Senator from Virginia and the Senator from Arkansas.

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

The Senator from Virginia is recognized.

Mr. WARNER. I thank the Chair.

(The remarks of Mr. WARNER and Mr. PRYOR pertaining to the introduction of S. 2290 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

The Senator from Michigan is recognized.

PRESCRIPTION DRUGS

Ms. STABENOW. Mr. President, I came to the Senate back in 2001 focused in part on lowering the cost of prescription drugs and the importance of making sure every American senior, every person with disabilities on Medicare, had the opportunity to receive their medicine through the Medicare system, which has been so very successful. We had a lot of work, a lot of effort go back and forth on the Medicare bill as time went on, related to Medicare Part B, and it changed from being about our seniors to being about what was best for those in the industry, particularly the pharmaceutical industry. We began to see a bill that was written, in fact, for the industry rather than for our seniors.

I stand here this evening calling on my colleagues to join with us on this side of the aisle to fix this, to get it right for people. We have a Medicare prescription drug plan that has been adopted that costs twice as much for the American taxpayer as it should, much more for most seniors than it should, and provides less in options and less in medicines than it should. It makes no sense to continue with something which is so confusing, with the cost gaps, which does not allow our poorest seniors to get the medicines they need or, if they do, they are paying more than they did last year. It makes no sense.

We stand here getting ready to go on a recess next week without having fixed the basics of what is wrong with this program. We know that at the beginning of January, our poorest seniors on Medicaid were switched over to the Medicare Program. But too much of the time the computers didn't work, the pharmacists did not have records in the system, and seniors didn't know what plans they were in. They were arbitrarily put into a plan that may not cover their medicines today or costs much more than it should. We saw the administration indicate that while this was being fixed, the pharmacists should go ahead and give people their medicines for the first 30 days. In many cases, States have stepped in to try to continue to help our seniors to get the life-saving medicine they desperately need while all of this gets figured out.

At the end of 30 days, it wasn't figured out. That was the end of January. Here we are now on February 15, and we are into a 2-month extension, a 60-day extension to try to figure out this mess for our seniors.

Pharmacists are told to continue giving people their medicine. Of course, it is the right thing to do. People should not be losing their medicine. But now I am getting calls from pharmacists who are deeply concerned because they are trying to decide whether their small family-owned pharmacy, for example, will be able to continue to pay its own bills without reimbursement or they are going to have to choose whether to help the people in the community they care about, whom they were set up to serve, and want to serve and are serving.

The question is, What is going to happen? Are the pharmacies going to get paid? Are the States going to get reimbursed? What happens to the seniors at the end of March? Are we going to see another 30 days or another 60 days because of a failed system that is confusing? We need to fix this, and it can be fixed.

On this side of the aisle, Senator JAY ROCKEFELLER has legislation many of us cosponsored to make sure that States are reimbursed. We need to make sure those who are providing the medicines now will get this worked out and will be reimbursed.

We also have another series of issues that need to be addressed with this system. People have until May 15, 3 months from today, to decide whether they are going to sign up to be a part of the Medicare system in terms of their prescription drugs and wade through all of this. In Michigan, there are about 65 plans. God bless them if they can get through it, or their children or friends can help them get through all of this and figure out the plan they are going to be on. But once they figure it out, they are locked into the plan after May 15 for a year. Shockingly, the people they sign up with aren't locked into the same agreement for a year. The drug companies can change what is covered. They don't have to cover the plan.

If my mother has worked through a plan that covers four medicines, for example, after May 15 if they decide they will only cover two, or maybe they decide not to cover any of them, that is OK under the current system. It is not OK for the American people. It is not OK for people who are counting on us to have a plan that works.

What if they want to raise the price? You lock into a system, looks like a good deal, figure out the premium that works for you, figure out the copay, what is covered, after May 15 you are

locked in for a year. But the plan could change the price, and it could change it every day, if they wanted to. That is outrageous, absolutely outrageous.

A colleague of mine, Senator BILL NELSON, introduced a bill I am cosponsoring with others to extend that May 15 date to the end of the year to at least give people a year to figure out what is going on.

But in addition to that, we need to say once somebody is locked into a plan, everybody is locked in. You can't say I am obligated or my mother is obligated to pay a monthly premium and a copay on a plan they sign up for but the other side can change the contract, change the price, and no longer cover the medicine. That is outrageous. It makes absolutely no sense whatsoever.

I have an example of a gentleman with MS who called my office a couple of weeks ago. He worked through all of the plans and made a determination on a plan that would cost him $50 a month for his medicine. He got ready to go to the pharmacy and thought he would call to make sure the price he had was right. He called and found out that, no, that has been changed now. It is over $500. He is fortunate because he could and did drop that plan because it is not May 15. If that were after May 15, this gentleman with MS would be locked into a plan costing him over $500 for something he thought he was getting for $50. Who in their right mind would say that is OK? We can do better than that. We have to do better for our seniors and for the people with disabilities.

To add insult to injury, we have a situation where negotiating for group prices is actually prohibited in this new Medicare bill. How does that make any sense at all? You are talking about over 31 million people on Medicare. That would be a pretty good group discount if they were negotiating together for a group discount. But that is prohibited. So we are locking in the highest possible prices. The taxpayers are paying more, the seniors are paying more, and people with disabilities are paying more because they are not allowed to do group pricing.

The VA, on behalf of veterans, doesn't pay top dollar. They get about a 40-percent discount. That makes sense. There is no reason why that should not be happening here with a plan that in fact is written for seniors and the disabled.

What happened? What happened when people didn't get the choices they wanted, which is the one I am advocating for, which is a real benefit to Medicare—sign up, go to your pharmacy, know what your prices are, like Medicare. What happened? Why didn't that plan get enacted instead of this privatized approach forcing people to go through private insurance companies or HMOs to get the help they need? How did that happen? How did it happen that Medicare is stopped from negotiating the best deal? How did that happen? How did it happen that seniors have to sign up for a plan and be locked in for a year, but the people on the other side providing the benefit, getting the premium and the copay, don't have to have prices that are locked in for a year or the range of medicines they will cover locked in for a year?

When you look at what happened, unfortunately, this is the legislative process at its worst. Unfortunately, for somebody who came here wanting desperately to make sure that we are providing low-cost medicine for everybody through various means but certainly for our seniors, this was an extremely disturbing process that occurred that resulted in this new law.

The reality is while we were negotiating on the Senate floor, the head of the Centers for Medicare and Medicaid was at the same time negotiating himself a job with a pharmaceutical industry. We now know that at least 10 people from the administration working in Medicare and Medicaid have now gone out to work with the industry. We also know that in the House, one of the committee chairs, at the same time he was negotiating this bill, was negotiating a salary for himself of $2.5 million to go to work for PhRMA, which is a lobbying arm for the brandname pharmaceutical industry. That is outrageous. When we talk about reform, when we talk about what needs to be done here, we need to start with that. That is the kind of thing that, in fact, we address in our honest government bill that has been passed and submitted by the Democrats in the Senate. We need to deal with that.

But the reality is we have a bill that was written for the interests of people in the industry, not for seniors and the disabled in this country, and not for the taxpayers either.

When you lock in the biggest prices possible, you are not looking out for taxpayers' interests any more than looking out for the interests of seniors or the disabled. This needs to be fixed. There needs to be a sense of urgency about this.

I know at home there is an outrage about this. This needs to be fixed. There are those potentially who can be helped by this bill. I hope everybody who can receive assistance under this new benefit will be able to wade through the bureaucracy and figure out or have somebody help them get some help for themselves. Every day, there is a sense of urgency for people, but we have to fix this overall.

In my book, we need to start over and get this right and decide we are going to worry about the person right now, at almost 7 o'clock tonight, on a Wednesday night, who has probably had dinner already and is sitting down maybe deciding what medicine they take tonight—or do I have my pills for tomorrow? Do I cut them in half so they will last longer? Maybe I can take them every other day. Maybe I am a wife whose husband takes the same blood pressure medicine and can share, even though it is dangerous for your health to do that.

This is the United States of America. We can do better than that. We can do better than a Medicare bill that costs too much and provides too little and does not put Americans first. We can do better than that.

My colleagues on this side of the aisle stand ready and are going to speak out every single day to create a sense of urgency about getting this done. We need to work together. Things only happen when we work together on a bipartisan basis. We need to do that. But we cannot let another month or two go by without having fixed the things that are right in front of us. We can't let time go by and not have dealt with the issues that lock people into a system that can raise their prices and take away their medicine while they have to continue to pay. That is outrageous.

There is a better way to do this through Medicare. That is the way it should have been done from the very beginning. There is absolutely no reason we can't go back and get this right.

I hope everyone who cares about this issue will be speaking out, will do everything they can to raise this issue and call on us to act and get this right. This is not the finest hour of this Congress or this administration. We can do much better than what has been done.

I am going to continue to do everything in my power to both fix this in the short run for people and then make sure we have a real prescription drug benefit for people as we go forward. Medicine isn't a frill. This is about life and death for too many people. We need to go back and get this right. I am hopeful that, working together, we will.

Thank you, Mr. President.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. COBURN. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. COBURN. Mr. President, I want to speak a few minutes after hearing the Senator from Michigan. I thought, first of all, her accusations have to be answered. First of all, she made a fairly serious charge on a friend of mine, the Congressman from Pennsylvania, Bucks County, Jim Greenwood, and implied that not only was his vote and his work in trying to secure prescription drugs for seniors part of a deal with the pharmaceutical industry, which I think there is no foundation for whatever, and I believe it also probably is in very poor taste for this Senate to start hanging out people who have left and demeaning their name on the basis of whom they go to work for. If we counted on both sides, we would find plenty of ammunition to do that. I think that is probably not the decorum of the Senate. I hope we will not hear that again.

I have lots of differences with former Congressman Greenwood in terms of

social issues, but I have always found him to be an honorable man, above board and straightforward in both his intellect and the way he carried himself. To disadvantage his reputation the way that was done I find unconscionable.

No. 2, the Senator from Michigan did run a campaign on lowering prescription drugs. Her campaign was increased competition and reimportation, as well as Government control of every aspect of the pharmaceutical industry to lower the prices.

The program this country has I would not have supported. I do not believe it is the Government's role for us to supply to seniors in this country, but this program will supply drugs at half the cost of what most seniors who have been paying for their prescription drugs pay. To scare seniors into thinking they have a prescription drug program and they will not have one in 2 months or 2 weeks or 6 months is the type of tactic that undermines the integrity of this Senate and is one of the reasons people in this country are losing confidence in elected representatives. Quite frankly, the difference is going to be a lot of seniors today are having medicines they would not otherwise have.

I don't like it, but it is understandable, and we must recognize any program of this magnitude, when it starts, is going to have trouble. They are having far less problems now. The vast majority of people and the vast majority of pharmacists are not having a problem with the program. It will still have some bugs for the next couple of months. It will get better every month.

The goal of the program was to make sure those people who were choosing between food and medicine did not have to make that choice. Even though I'm not a fan of this program, it is accomplishing its goals. To scare seniors with this tactic, to try to scare seniors into thinking something they have now will go away, is unconscionable and is beyond the decorum of the Senate.

I yield the floor.

Mr. LEAHY. Mr. President, as one of the authors of the original USA PATRIOT Act, as someone who voted to reauthorize an improved version of the act back in July 2005, and as an American concerned with our security, I am glad that we are making progress, but I have some misgivings about the bill being considered today. I will vote to proceed and hope there is an opportunity to improve the bill and the PATRIOT Act reauthorization even further.

I believe that the PATRIOT Act provides important and valuable tools for the protection of Americans from terrorism. These matters should be governed by law and not by whim. Legislative action should be the clear and unambiguous legal footing for Government powers.

I am glad that the sunsets that Congressman Armey and I insisted be included in the 2001 act brought about reconsideration and some refinement of the powers authorized in that measure. Those sunsets contributed to congressional oversight. Without them I expect the Bush administration would have stonewalled our requests for information and for review of the way they were implementing the statute. The sunsets were the reason we have been going through a review and renewal process over the last few months. Now the challenge to Congress is to provide the effective oversight that will be needed in the days ahead and to ensure that there is effective court review of actions that affect the rights of Americans.

Several specific provisions of this bill reflect modest improvement over both the original PATRIOT Act and the reauthorization proposal initially produced by the House-Senate conference. It is with these improvements in mind that I will support Senator SUNUNU's bill.

These improvements, like those contained in the conference report, were hard won. The Bush administration pursued its usual strategy of demanding sweeping Executive powers and resisting checks and balances. As usual, it was short on bipartisan dialogue and long on partisan rhetoric. And as usual, the Republican majorities in the House and Senate did their utmost to follow the White House's directives and prevent any breakout of bipartisanship. But a ray of bipartisanship did break out, and this reauthorization package is the better for it.

Senator SUNUNU's bill modifies a provision I objected to that would have required American citizens to tell the FBI before they exercise their right as Americans to seek the advice of counsel. Chairman SPECTER and I worked together to correct this provision and Senator SUNUNU has improved it further. I commend his efforts in this regard.

Another important change provided by the Sununu bill builds upon another objection I had and an idea I shared with him to ensure that libraries engaged in their customary and traditional activities not be subject to national security letters as Internet service providers. This is a matter I first raised and feel very strongly about. I commend Senator SUNUNU for the progress he has been able to make in this regard. The bill is intended to clarify that libraries as they traditionally and currently function are not electronic service providers, and may not be served with NSLs for business records simply because they provide Internet access to their patrons. Under this clarification, a library may be served with an NSL only if it functions as a true Internet service provider, as by providing services to persons located outside the premises of the library, but this is an unlikely scenario. In most if not all cases, if the Government wants to review library records for foreign intelligence purposes, it will need a court order to do so. The language I proposed to Senator SUNUNU in this regard was less ambiguous than that to which the Bush administration would agree. Still, my intent, Senator SUNUNU's intent, and the intent of Congress in this regard should be clear. It is to strengthen the meaning and ensure proper implementation of this provision that I will support this bill. As a supporter, I trust my intent will inform those charged with implementing the bill and reviewing its proper implementation.

It is regrettable that the Bush administration would not engage all of us in a bipartisan conversation on ways we could improve the bill. The White House Counsel only spoke to the Republican Senators. In that setting, they negotiated to achieve what they viewed as improvements. It is less than we would have liked. I know that the Republican Senators who worked on this bill were well intentioned and I commend their efforts. Regrettably, I note that one set of changes included in this bill I strongly oppose.

The Bush administration has used the last round of discussions with Republican Senators to make the gag order provisions worse, in my view, by forbidding any challenge for one year. The Bush administration has simply refused to listen to reason on this and insists on this thumb on the scale of justice. In addition, the bill continues and cements into law procedures that, in my view, unfairly determine challenges to gag orders. The bill allows the Government to ensure itself of victory by declaring that, in its view, disclosure ''may'' endanger national security or ''may'' interfere with diplomatic relations. This is the type of provision to which I have never agreed in connection with national security letters or section 215 orders. It will serve to prevent meaningful judicial review of gag orders and, in my view, is wrong.

I will continue to work to improve the PATRIOT Act. I will work to provide better oversight of the use of national security letters and to remove the un-American restraints on meaningful judicial review. I will seek to monitor how sensitive personal information from medical files, gun stores, and libraries are obtained, used, and retained. While we have made some progress, much is left to be done.

In 2001, I fought for time to provide some balance to Attorney General Ashcroft's demands that the Bush administration's antiterrorism bill be enacted in a week. We worked hard for 6 weeks to make that bill better and were able to include the sunset provisions that contributed to reconsideration of several provisions over the last several months. Last year I worked with Chairman SPECTER and all the members of the Judiciary Committee and the Senate to pass a reauthorization bill in July. As we proceeded into the House-Senate conference on the measure, the Bush administration and congressional Republicans locked Democratic conferees out of their deliberations and wrote the final bill.

That was wrong. In December, working with a bipartisan group of Senators, we were able to urge reconsideration of that final bill. Senators SUNUNU and CRAIG were able to use that opportunity to make some improvements. I commend them for what they were able to achieve and hope that my support for their efforts has been helpful. I wish that along the way the Bush administration had shown a similar interest in working together to get to the best law we could for the American people. When the public's security and liberty interests are at stake, it seems especially prudent and compelling to me that every effort should be made to proceed on a bipartisan basis toward constructive solutions. Instead, the White House has chosen once again to try to politicize the situation.

Since the conference was hijacked, I have tried to get this measure back on the right track. We have been able to achieve some improvements, and that is no small feat given the resistance by this White House to bipartisan suggestions. I regret that this bill is not better and that the intransigence of the Bush administration has prevented a better balance and better protections for the American people. I will continue to work to provide the tools that we need to protect the American people. I will continue to work to provide the oversight and checks needed on the use of Government power and will seek to improve this reauthorization of the PATRIOT Act.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. I understand an agreement has been reached to have the cloture vote on the motion to proceed tomorrow morning and then a cloture vote on the bill on that Tuesday after we return from the recess.

I point out the agreement essentially implements the schedule that would have been followed had I required the Senate to go through all the procedural hoops necessary to reach a vote on the White House deal. It, of course, maintains the 60-vote threshold for passing this legislation.

I thank the two leaders for working with me. I have no desire to inconvenience my colleagues or force votes in the middle of the night, as I understand the majority leader was threatening.

I have been trying all day to get an agreement to allow debate and votes on a small number of amendments to this bill. I do not understand what the majority leader is afraid of or concerned about in rejecting this reasonable request. So while I do not object to the agreement that will be propounded in a few minutes, I hope once we are on the bill tomorrow, I will be able to offer amendments and have them voted on.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. FRIST. 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. FRIST. Mr. President, we are at a continuation of a sequence of events which has resulted in a lot of delay, a lot of postponement, really reflecting these insufferable attempts to put off the Nation's business with obstruction and stalling. It is disturbing to me because we have so many issues to address in securing America's future, securing America's future in terms of security, securing America's future when it comes to looking at health care issues, education issues, securing America's prosperity as we look at competition and innovation and things we can do to invest in math and science education, and making us more competitive and creating jobs with respect to China and India.

There are so many issues, many of which were outlined by the President of the United States in the State of the Union Address. Yet we are going through this stall ball, which is reflected now on the PATRIOT Act, where we have the PATRIOT Act reauthorization being filibustered by the Democrats, which started in December when we had a filibuster on the reauthorization, and the filibuster now on the motion to proceed. Now, with that continued postponement and filibuster, there is no way to complete this reauthorization of the PATRIOT Act before we go on recess. There is no way to do it using the tools of the Senate, using the tools of the filibuster.

And a filibuster I can understand if you are shaping the bill or if the outcome is not absolutely predetermined. But the outcome here is absolutely predetermined. There will be overwhelming support in this body for this bill. It is important to the safety and security of the American people. It breaks down barriers between the intelligence community and our law enforcement community, and it does so protecting the civil liberties of Americans.

There is overwhelming support. The outcome is determined. Yet we have been in a quorum call for most of the day, and using the rules of the Senate. Again, people say: Well, if it is a filibuster, why aren't people talking all the time? With the rules of the Senate, you do not have to be talking, but you control the Senate in terms of time. With that, we are able to file cloture motions, and then you wait another 30 hours, and it is a series of cloture motions, which stretches the time out, again, really wasting precious time on the floor of the Senate when we should be governing, answering, responding to the problems of everyday Americans, the challenges of everyday Americans.

Looking at what we have gone through recently, for example, the pensions bill, we passed the pensions bill on November 16, 2005, with a vote of 97 to 2, overwhelming support. I asked the Democrats to appoint conferees on December 15 of last year. I asked them to appoint conferees again, renewing that request on February 1. I have been in continued conversation and discussions with the Democratic leadership. Again: Not yet, postponement. We know the issues pertaining to the pensions bill. We can't respond until we can get to conference. The House is ready with conferees, but we can't go to conference until we appoint conferees. Yet once again, those names are not given.

I have been in discussion with the Democratic leader. I understand we will be able to appoint conferees in the next 24 hours or so. But it is the pattern of postponement, delay, obstruction, and stopping the Nation's business that disturbs me.

The asbestos bill, I said long ago that we would spend this period on asbestos. We were forced by the other side of the aisle to file cloture on the motion to proceed just to get on that bill, a bill that does address victims who are suffering from asbestos-related disease and who are not being compensated fairly. We voted in favor of cloture 98 to 1. Then we had delayed consideration of the bill by 3 days by forcing cloture, and then we had insistence on a day of debate only—again, postponement.

The Alito nomination ended up being successful; the advice and consent was carried out. But once again, there was a week delay beyond which we had worked out a time line before we could bring the Alito nomination to the floor.

Earlier this week and over the last couple of weeks, we have had to deal with the tax reconciliation bill to go to conference. The Democrats forced the Senate to consider the bill three separate times just to get to conference. We had 20 hours of debate the first time, with 17 rollcall votes, and then we had another 20-hour limitation, with 7 more rollcall votes. Then we had a series of votes yesterday morning on motions to instruct before we get to conference. All of that didn't change the bill at all. These are nonbinding motions to instruct—but again, another manifestation of stalling, postponing, delaying.

It is frustrating because whether it is the tax relief bill or the Alito nomination or the asbestos bill or the pensions bill or, now, the PATRIOT Act, it is a pattern that, if we are going to be working together in the Nation's interest, we cannot continue over the course of the year; otherwise, we will not get anything done when we do have challenging problems with health care costs too high, things that we can do on education in terms of math and science, making our country and our students more competitive in the future, addressing issues surrounding funding our military.

So with that, I plead to my colleagues on both sides of the aisle to work together to make progress. Let's be doing what we are supposed to be

doing and that is governing in the Nation's interest.

Mr. President, I ask unanimous consent that the cloture vote on the pending motion to proceed occur at 10:30 a.m. tomorrow with the mandatory quorum waived; provided further that if cloture is invoked, notwithstanding rule XXII, the Senate proceed immediately to the bill; I further ask consent that if a cloture motion is filed on the bill during Thursday's session, then that cloture vote occur at 2:30 p.m. on Tuesday, February 28; provided further that if cloture is invoked on the bill, then at 10 a.m. on Wednesday, March 1, the bill be read a third time and the Senate proceed to a vote on the bill with no intervening action or debate.

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

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be 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.

ENERGY

Mr. DORGAN. Mr. President, I will spend a few minutes talking about energy.

There was a letter to the editor in the Wall Street Journal, I believe, this morning or yesterday morning, responding to an editorial where I had given a response to an editorial. The writer to the Wall Street Journal was taking me to task for saying there is not a ''free market'' in energy or in oil. My point was there is no free market in oil. He said he doesn't know what I have been drinking or where I got these thoughts. He said there is a free market in oil.

Let me describe all of this in the context of President Bush's State of the Union Address in which he suggested that we are ''addicted'' to oil and we need to move toward greater independence with respect to oil, especially coming from off our shores.

First, on the subject of a free market, there is no free market in oil. A substantial portion of oil comes from halfway around the world, under the sand in the Middle East, in Saudi Arabia, Kuwait, Iraq, and Iran. A substantial part of the world supply of oil comes from that region. And those OPEC ministers, having formed a cartel, sit around a room and decide how much they are going to pump and at what price. That is a cartel. Cartels are the antithesis of the free market system. Yet the OPEC countries have this cartel, produce a great amount of oil, and they decide how they are going to manipulate price and supply. That is No. 1.

No. 2, you have the large oil companies, bigger and much stronger because of the blockbuster mergers in recent decades, especially in the last one. These oil companies used to be one company, and now they are a company with several names, such as ExxonMobil. That used to be Exxon, and that used to be Mobil. They decided to fall in love and get married, and now it is ExxonMobil. Last year, ExxonMobil made $36.1 billion—the highest profit ever recorded in corporate America. ExxonMobil.

Then there is Chevron-Texaco. It used to be Chevron, and there was Texaco. They discovered they liked each other and they got hitched, making it Chevron-Texaco.

And then we have ConocoPhillips, which used to be separate companies. Once they decide to marry up and merge, they save all these names.

So there is ExxonMobil, Chevron-Texaco, and ConocoPhillips. Maybe some day they will all merge, and when you put them all together, they will be ExxonMobil ChevronTexaco ConocoPhillips—just one company. The blockbuster mergers mean these companies are bigger, stronger, and have greater capacity to influence the marketplace.

So you have the OPEC ministers in a closed room talking about supply and price and how they affect supply and price and the manner in which they want to affect it. You have the oil companies, larger and stronger, having more muscle to influence the marketplace. And third, you have the futures market. The futures market, rather than simply providing liquidity for training, has become an orgy of speculation. So those three things are what determine the price of oil and the price of gasoline. It has very little to do with the so-called free market. Yet we hear all these people talk about the free market.

Do you think it is the free market that gives us a company such as ExxonMobil, with profits of $36.1 billion last year? That is not a free market. That is the price of oil which is somewhere between $60 and $70 a barrel. That is up from $40 a barrel average price of the year before, at which point this company had the highest profits in their history. So it went from an original price of $40 a barrel to over $60 a barrel, and the company had no additional expenses at all. That price went to that level and it stayed relatively at that level, and it has dramatically boosted the profits of all of these oil companies—Shell, $25.3 billion; B.P., $22.3 billion; $36.1 billion for ExxonMobil.

Listen, all the gain is here with the big oil companies and the OPEC countries. All the gain is here, and all the pain is on the side of the consumers, people trying to heat their home in the winter, people driving to the gas pump trying to figure out how much it is going to take to fill up their tank. They are paying the higher prices, and all that goes into these coffers, higher profits. And that is sent also to the OPEC countries.

The President talks about an addiction to oil. I would use that term. We are hopelessly addicted to oil. I don't suggest that we have an oil anonymous organization where we show up on Wednesday nights and confess that we drove our Humvee 10 blocks to pick up a bagel. What do we confess to? Well, we have a 6,000-pound vehicle and we decided we needed to run an errand to buy a piece of ribbon. That is not what I suggest, nor is it what I expect the President suggest.

Addiction to oil. Let's think about that. We suck 84 million barrels of oil out of this Earth every day. Every single day, 84 million barrels are sucked out of the Earth. One-fourth of it, 21 million barrels of oil, goes to this country, the United States of America. We use fully one-fourth of all the oil that is extracted from this planet every single day. Sixty percent of all that oil we use in this country comes from off our shore, and much of it from troubled parts of the world. If, God forbid, something should happen to the supply of oil from Saudi Arabia tomorrow, we would have a huge problem.

Our economy is, in fact, attached to the ability to get oil from other parts of the world that are very troubled parts of our planet. If terrorists, for some reason, interdicted the supply of oil, shut off the supply of oil tomorrow morning, our economy would be in deep trouble. Obviously, there are national security interests here. Does it make sense from a national security standpoint to have the American economy running on 60-percent foreign oil, much of it coming from troubled parts of the world? The answer to that is no. Of course not. So in addition to national security issues, you have the issue of the unfairness, of huge profits for the major oil companies, huge profits for the OPEC countries, Saudi Arabia, Kuwait and others, and then substantial pain for people, many of whom can't afford it, pain in the form of higher prices.

Energy independence: That is the watchword. Energy independence, they say. What does all this mean? Let me go back for a moment to January 13, 2002. January 13, 2002 is the day the Ambassador for Saudi Arabia showed up at the White House in the Oval Office. Prince Bandar, the Saudi Ambassador, was then told at a meeting in the White House on January 13 that this country was going to attack Iraq, invade the country of Iraq. It is interesting that not until the next day did the President notify the U.S. Secretary of State.

On January 13, at a meeting in the Oval Office—and again, this comes from Bob Woodruff's book ''Bush at War''—the President called in and notified the Saudi Ambassador to the United States that we were going to war with Iraq. The following day, the President notified his own Secretary of State that he had made a decision to