

pre-9/11 “wall” between intelligence officials and law enforcement was significant in that it “opened up new opportunities for cooperative action.”

But the President claims—hear me!—that these powers are within his role as Commander in Chief of the Army and Navy. Make no mistake, the powers granted to the Commander in Chief in this Constitution are specifically those as head of the Armed Forces.

These warrantless searches are conducted not against a foreign power but against whom? Against unsuspecting and unknowing American citizens—like you, like you, like you, and like you! They are conducted against individuals living on American soil—not in Iraq, not in Afghanistan. There is nothing within the powers granted in the Commander in Chief clause that grants the President the ability to conduct clandestine surveillance of American civilians. Nothing. We must not allow such groundless, foolish claims to stand unchallenged.

Now, the President claims boundless authority, an unlimited authority through the resolution that authorized war on those who perpetrated the September 11 attacks. But that resolution does not give the President unchecked power to spy on our own people. Read it. That resolution does not give the President unchecked power to spy on our own people. That resolution does not give the White House, this administration, the power to create covert prisons for secret prisoners. That resolution does not authorize the torture of prisoners to extract information from them. That resolution does not authorize running black hole secret prisons in foreign countries to get around U.S. law. That resolution does not give this President, or any President, the powers reserved only for kings and potentates.

I continue to be shocked and astounded by the breadth with which this administration undermines the constitutional protections afforded to the people—the people—and the raw arrogance with which it rebukes the powers held by the legislative and judicial branches. The President has cast off Federal law enacted by Congress, often bearing his own signature, as mere formality. He has rebuffed the rule of law, and he has trivialized and trampled upon, trampled under foot the prohibitions against unreasonable searches and seizures guaranteed to Americans by the United States Constitution. This Constitution still lives. This Constitution was made for all time, for all administrations, for all Presidents, for all Senators.

We are supposed to accept these dirty little secrets, and we are told that it is irresponsible to draw attention to President Bush’s gross abuse of power and constitutional violations. But what is truly irresponsible is to neglect to uphold the rule of law.

We listened to the President speak last night on the potential for democracy in Iraq. The President claims to want to instill in the Iraqi people a

tangible freedom and working democracy, at the same time that he violates our own U.S. laws and checks and balances. President Bush called the recent Iraqi election “a landmark day in the history of liberty.” I daresay in this country we may have reached our own sort of landmark. Never have the promises and protections of liberty seemed so illusory, so fleeting. These renegade assaults on the Constitution and our system of laws strike at the very core of our values and foster a sense of mistrust and apprehension about the reach of Government.

I am reminded of Thomas Payne’s famous words: “These are the times that try men’s souls.”

These astounding revelations about the bending, the twisting, the stretching, and contorting of the Constitution to justify a grasping, irresponsible administration under the banner of “national security” are an outrage. Congress can no longer sit on the sidelines. It is time to ask hard questions of the Attorney General. It is time to ask hard questions of the Secretary of State, of the Secretary of Defense, and of the Director of the CIA. The White House should not be allowed to exempt itself from answering the same questions simply because it might assert some kind of “executive privilege” in order to avoid further embarrassment.

The practice of domestic spying on citizens should stop immediately. Oversight hearings need to be conducted. Judicial action may be in order. We need to finally be given answers to our questions: Where is the constitutional and statutory authority for spying on American citizens? Where? Where is that authority to be found?

What is the content of these classified legal opinions asserting that there is a legality in this criminal usurpation of rights?

Who is responsible for this dangerous and unconstitutional policy?

How many American citizens’ lives have been unknowingly affected?

Mr. President, fellow Senators, let us in our day remember the words of Brutus to Cicero:

Our ancestors scorned to bear even a gentle master!

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

#### UNITED STATES CONSTITUTION

Mr. DURBIN. Mr. President, I come to the floor to commend my colleague from West Virginia, ROBERT C. BYRD. Some of the people who are witnessing this session of the Senate had a chance to hear this man speak just moments ago. I do not know of another Senator more dedicated to our U.S. Constitution or one who has been more fearless in attacking Presidents of both political parties when he thinks that they have gone too far. Senator BYRD’s speech should be read by every American as a reminder of basic freedoms in

this country that we should never, ever take for granted.

I listened to his speech as I was sitting in my office and I thought I would come to the Chamber and try to follow in his footsteps, though what I have to offer cannot possibly match what he had to say.

Several things have occurred over the last several years which are historic in nature and troubling. This administration has decided on three occasions, at least three separate occasions, to depart from the traditions of America, traditions which we have followed for generations, Presidents, Republican and Democratic alike.

It was this administration which told us we could no longer wait to be threatened by another country, we could no longer wait to be attacked by another country, we must act preemptively, we must strike first, based on intelligence and information we must attack first, and that is why we invaded Iraq. What did that intelligence lead us to believe? That Iraq had weapons of mass destruction threatening the United States and our allies; that Iraq was developing nuclear weapons that could threaten the Middle East and the United States; that Iraq was in concert in some way with al-Qaida and responsible for the 9/11 attacks; that Iraq was securing fissile material from Africa to manufacture into nuclear weapons. All of those things were told to the American people, some by the President in his State of the Union address, and every single one of them turned out to be wrong.

The President told us we needed to attack Iraq for those reasons, and it turned out none of the reasons were valid, not one. So he would change the foreign policy of the United States not to wait and carefully make a decision about whether we commit our troops and our treasure but, rather, to move preemptively—a departure from foreign policy for generations.

Secondly, this administration said that we had to depart from the traditions of the United States for generations when it came to the interrogation of prisoners. This Bush administration argued that we had to redefine torture in a way that was inconsistent with treaties the United States has accepted as law of the land. Terrible things occurred. We saw the worst of them in some of the photos from Abu Ghraib and reports from other agencies.

Thank goodness for the leadership of Senator JOHN MCCAIN, a Republican of Arizona, himself a POW in the Vietnam War, also a victim of torture in that experience, who stood up to the administration and said, You are wrong. Torture is not American. If we are fighting for values, those values cannot include torture.

He was responding to our troops who were writing to Members of Congress saying, Give us clarity, give us direction, tell us if the world has changed;

soldiers, graduates of West Point, who were told we do not engage in torture as soldiers representing the flag of the United States of America. Thank goodness for the leadership of Senator MCCAIN in confronting the Bush administration and forcing them to back down when it came to this dramatic change in the standards for torture.

Now comes another chapter in changing the tradition of America under this administration relative to our right of privacy as American citizens, the PATRIOT Act, which I voted for to give this Government more powers to fight terrorism, but we said every 4 years we will look at it to make certain we have not gone too far, that we have not given up our basic rights and freedoms in the name of security and safety.

Now we are involved in a debate. My colleague from Alabama has been to the floor several times. As a former prosecutor, he argues that under the PATRIOT Act we have to trust the Government, we have to trust the prosecutors, not to go too far. Unfortunately, that is not the standard in America. The standard in America says in this Constitution, this Bill of Rights, that our basic freedoms are guaranteed to us, and before this Government takes those freedoms or infringes upon them, there must be good reason and good cause.

Last week, on a bipartisan basis, we said, Stop this version of the PATRIOT Act, make certain that changes are made so that the freedoms and rights of Americans are protected. In the midst of that debate came a revelation which is truly astounding, a revelation that for years the Bush administration, through Government agencies, has been involved in wiretaps and eavesdropping on American citizens. The reason this is of concern, of course, is that it violates a longstanding legal requirement that the Government has to obtain a court order to eavesdrop electronically on an American in the United States. We spell out with specificity what the Government must do if it is going to invade our privacy, listen to our conversations, hack into our computers, whatever it may be. The grounding for that is not just some speech on the Senate floor or the House; the grounding for that is this Constitution, where its fourth amendment makes it clear from the beginning of this Nation the standard we would use, a standard worth repeating in the fourth amendment:

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.

That is in our Constitution that we have sworn to uphold. And for thousands of unsuspecting Americans, their basic records, their communications, their computers have been looked at and listened to by this Government, without legal authority.

So therein lies the third dramatic departure of this administration, from a tradition which most of us assumed would never be violated, a tradition which says that our privacy can be compromised if a President assumes the power to do it. This President did not come to Congress saying, I need powers to listen to America's conversations. No. He just did it. He said he has the power to do it as Commander in Chief.

Well, there are some obvious questions that should be asked when we hear these things. Where is the concern in Congress? Where is the sense of outrage in the Senate? Where is the sense of obligation that our generation owes to our children to make certain that we are held accountable to protect their constitutional rights? I am glad that Senator SPECTER of the Judiciary Committee has said we will have a hearing on this, and we should. This is a serious matter.

Some of us saw recently a movie about Edward R. Murrow titled "Good Night and Good Luck." I remember Edward R. Murrow. As a young boy, I used to see him on television from time to time. This movie depicts the McCarthy era where the Congress in this case overstepped its authority, and one Senator from Wisconsin literally destroyed lives, literally infringed on the rights and liberties of individual citizens. The sense of outrage in America rose to such a level that eventually he was called to task and discredited for what he had done in violation of the basic rights of American citizens. It took some time. In the beginning, the red scare kept people quiet, they did not want to raise this issue.

Sadly, in this war on terrorism, we may be going through a parallel moment in history, where our fear of another 9/11 has kept us entirely too quiet and silent when this Government has gone too far. I hope what we have learned about this wiretapping and this eavesdropping, these violations of basic rights of citizens, will cause all Americans, not just those of us serving in the Senate, to stand up and speak out. If we swore to uphold this Constitution, it was not just the paper that it is written on but the spirit and values that it stands for, values of privacy and freedom which once lost may never be reclaimed.

I urge my colleagues to read carefully the earlier remarks of Senator ROBERT BYRD and consider carefully our individual responsibilities.

I yield the floor.

Mr. CRAIG. Mr. President, may I ask what the order is at this moment?

The PRESIDING OFFICER. The Senate is in morning business, with Senators permitted to speak for up to 10 minutes.

#### APPEALS REFORM ACT LANGUAGE

Mr. CRAIG. Mr. President, I rise today to express my concern that language was not included yet again by

this Congress in the supplemental bill—which is now embodied in Defense appropriations—to clarify that categorical exclusions as used by the U.S. Forest Service under the Appeals Reform Act of 1993 are exempt from comment and appeals.

That sounds technical, doesn't it? It isn't so technical if you believe in the Healthy Forest Act and the ability of the Forest Service, as so prescribed by the Congress, to operate under that specific act. A legislative fix is desperately needed as projects continue to pile up and create additional backlog for our U.S. Forest Service.

At the heart of this issue is when, where, and how the public is included in the execution of categorical exclusions extended in the projects. By definition, categorically excluded projects are categories of action which do not individually or cumulatively have a significant effect on the human environment and therefore normally do not require further analysis in either an environmental assessment or an environmental impact statement. The Forest Service requires scoping on each and every project on Forest Service land in which they want to utilize the categorical exclusion.

Let me quote from the Forest Service Environmental Procedures Handbook:

Scoping is required on all proposed actions, including those that would appear to be categorically excluded.

In other words, those actions the Forest Service may take on Forest Service ground in a given watershed that we have said are excluded under the Healthy Forest Act, as it relates to the National Environmental Policy Act—meaning an environmental impact statement—we still say the Forest Service scoping is required on all proposed actions, including those that would appear not to need a categorical exclusion.

If the responsible officials determine, based on scoping, that it is uncertain whether the proposed action may have a significant effect on the environment, prepare an EA [and that is chapter 40]. If the responsible official determines, based on scoping, that the proposed actions may have a significant environmental effect, prepare an EIS.

That is an environmental impact statement.

In other words, we have tried to be very careful within the law to make sure that happens. I am going to submit for the RECORD a much more detailed understanding of what exactly we mean because it is critically important at this moment that we allow the Forest Service to get back on track.

Having said that, I have talked legalese as it relates to a specific act of Congress and a law that is in place now for our Forest Service to act. What does it mean in real life, what does it mean on the ground? I think all of us witnessed the fires of late fall and early winter in the greater Los Angeles watershed that were burning the scrub oak in the foothill country in back of Los Angeles. In most instances, those