

CONCLUSION OF MORNING
BUSINESS

The PRESIDING OFFICER (Ms. MURKOWSKI). Morning business is now closed.

USA PATRIOT ACT ADDITIONAL
REAUTHORIZING AMENDMENTS
ACT OF 2006

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

The legislative clerk read as follows:

A bill (S. 2271) 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.

Pending:

Frist amendment No. 2895, to establish the enactment date of the Act.

Frist amendment No. 2896 (to amendment No. 2895), of a perfecting nature.

PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Madam President, as we begin the debate and discussion on the USA PATRIOT Act, I urge my colleagues to invoke cloture to cut off debate tomorrow when the vote is scheduled at 2:30, and then proceed to pass the PATRIOT Act.

The PATRIOT Act was passed by the Congress and signed into law by the President shortly after September 11, 2001, to provide additional tools for law enforcement, and it was reviewed extensively by the Committee on the Judiciary, which I chair, last year; and the Judiciary Committee came out with a unanimous report, with all 18 members on the committee concurring in the final product.

We considered this a unique, if not remarkable event, considering that our Judiciary Committee has people at all positions on the political spectrum. So to have unanimous agreement was, we thought, quite an accomplishment. When the matter came to the floor of the Senate, it was passed by unanimous consent, which again was unique, if not remarkable, in that on a matter as complex and controversial as the PATRIOT Act all of the Senators were in agreement that it should be enacted.

We then went to conference with the House of Representatives and, as expected, the House had different views than what the Senate had in mind. But we worked through in a collegial way with Chairman SENSENBRENNER and others on the House side and came to a conference report which we submitted to the Senate.

We fell short of having enough votes to impose cloture when objections were reached to a number of provisions which had been included in the conference report.

There have since been some changes made in the legislation which is pend-

ing before the Senate. I compliment my colleagues, Senator SUNUNU, Senator CRAIG, Senator MURKOWSKI, who is presiding today, and Senator HAGEL, for a number of additions which led those four Republican Senators who had not voted for cloture to find the PATRIOT Act acceptable, taking the conference report and making these additions.

It is our expectation that there will be a number of Democrats, I think most of whom oppose cloture, so we have an expectation of receiving 60 votes tomorrow to be able to move the bill ahead.

The changes which were made as a result of these modifications provide for explicit judicial review of a section 215 nondisclosure order, a provision to remove from the conference report the requirement that a person inform the FBI of the identity of an attorney to whom disclosure was made or will be made to obtain legal advice or legal assistance with respect to a national security letter, and an additional provision to clarify current law that libraries that have been functioning in their traditional roles, including providing Internet access, are not subject to section 2709 national security letters.

These changes were, in my opinion, not major but helpful in the sense they have satisfied a number of Senators, I think, and are very constructive and enable us to move forward, which I expect will enable us to obtain cloture.

With the revised bill which is now before the Senate for a cloture vote tomorrow, it is my hope my colleagues will cut off debate, invoke cloture, and let us move ahead to the passage of the PATRIOT Act. It is not a bill to my precise satisfaction, but in the Congress of the United States, we reach accommodations and we reach compromises. My preference would have been to have the Senate bill enacted, but there were significant concessions made on both sides, especially by the House of Representatives, in agreeing to a 4-year sunset provision.

What I intend to do tomorrow is to propose additional legislation in this field which would take the current bill with the improvements made by Senator SUNUNU and his group and add a number of additional safeguards on civil liberties which will improve the bill even further, in my opinion, and to consider that on additional legislation in the Senate.

In so doing, I fully realize we will have to go through the legislative process. We will have hearings in the Judiciary Committee. We will make this the subject of oversight on what the law enforcement officials, specifically the FBI, will be doing, and we will ultimately, hopefully, report out of the Judiciary Committee a bill with the provisions which I am now about to enumerate which will, if successful in conference and to be signed by the President into law, return the bill to its form which passed the Judiciary Committee unanimously last year and passed the Senate unanimously.

The provisions in the bill which I will introduce tomorrow—I wanted to give my colleagues notice of what I intend to do—would be a provision, first, on the notice on search warrants to require that the target receive notification of the execution of a delayed notice search warrant within 7 days as the Senate-passed PATRIOT Act provided. The conference report provides for notice within 30 days, which was a significant compromise when the House of Representatives moved from 180 days to 30 days and the Senate moved from 7 days to 30 days, but it continues to be my view that the 7-day requirement is the best requirement.

The bill will further provide that section 215 will have the Senate-passed three-part test which will require a statement of facts accompanying an application to show that the records sought, first, pertained to a foreign power or an agent of a foreign power, second, relevant to the activities of a suspected agent of a foreign power who is the subject of an authorized investigation, or three, pertain to an individual in contact with a suspected agent of a foreign power.

I will put in the RECORD a memo detailing the differences between the Senate bill and the House bill and the conference report.

This provision goes to the heart of strenuous objections raised by people who filibustered the bill who objected to a fourth provision which gave the judge discretion to allow for a court order if there were a terrorism investigation involved generally which did not have one of this three-part test.

My view is that the three-part test is decisively preferable, although I do think in the spirit of compromise on our bicameral legislation, having the discretion of the judge to authorize the order if he found it warranted in light of the terrorism investigation was acceptable. This is preferable, and this will be included in the new bill to be introduced.

A third change will provide for judicial review of national security letters to eliminate the conclusive presumption in the conference report on the national security letter provision. The bill removes the ability of the Government to prevent judicial review of the nondisclosure requirement if it certifies in good faith that “disclosure may endanger the national security of the United States or interfere with diplomatic relations.”

This provision in the conference report was identical with what passed the Judiciary Committee unanimously and was adopted unanimously by the Senate. Those who have objected to this conclusive presumption say it was overlooked and that on further consideration they objected to it.

Upon additional analysis, it is my view this conclusive presumption is better out of the report, which gives the court the discretion to allow for the judicial review of these national security letters.