

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
On Amendment To Strike Immunity
February 11, 2008

I strongly oppose the blanket grant of retroactive immunity in the Intelligence Committee bill. This administration violated FISA by conducting warrantless surveillance for more than five years. They got caught. If they had not, they would probably still be doing it. In the wake of the public disclosure of the President's illegal surveillance of Americans, the administration and the telephone companies are being sued by citizens who believe their privacy and constitutional rights have been violated. Now, the administration is trying to force Congress to terminate those lawsuits in order to insulate itself from accountability. We should not allow this to happen.

The administration knows that these lawsuits may be the only way that it will ever be called to account for its flagrant disrespect for the rule of law. In running its illegal program of warrantless surveillance, the administration relied on legal opinions prepared in secret and shown to only a tiny group of like-minded officials ensured the administration received the advice they wanted. Jack Goldsmith, who came in briefly to head the Justice Department's Office of Legal Counsel described the program as a "legal mess." This administration does not want a court to have the chance to look at this legal mess. Retroactive immunity would assure that they get their wish.

The Judiciary Committee and Intelligence Committee tried for well over a year and a half to obtain access to the information that our members needed to evaluate the administration's arguments for immunity. Indeed, over a year ago Chairman Specter was prepared to proceed to subpoena information from the telephone companies in light of the administration's stonewalling. It was only just before the Intelligence and Judiciary Committees' consideration of this bill that committee

members finally obtained access to a limited number of these documents. Senators who have reviewed the information have drawn very different conclusions.

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

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

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

We hear from the administration and some of our colleagues that we must grant immunity or the telephone companies will no longer cooperate with the Government. Senators should understand that even if we do not grant retroactive immunity, telecommunications carriers will still have immunity for actions they take in the future. Their cooperation in the future will still be required by legal orders and they will not be subject to liability for doing what the law requires. If they follow the law, they have immunity.

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

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

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

I do support and will vote for the amendment that Senators Specter and Whitehouse will offer on “substitution”. This amendment would place

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

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

#####

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
In Support Of Amendment 3915,

To Limit The Use Of Unlawfully Obtained Information February 11, 2008

The authorities and procedures in S.2248 would permit the FISA Court to review government targeting and minimization procedures. If, however, the Court finds certain aspects of those procedures to be inadequate – even grossly inadequate – S. 2248 provides no authority to restrict the use of information already collected using those procedures. That means that the government would be free to access, use, and share information about private communications that was collected in violation of the law.

Senator Feingold's amendment would ensure that the Court has the authority to stop a continuation, and perhaps escalation, of the harm caused by the government's use of illegal procedures. This provision would limit the government's use and dissemination of illegally obtained information if the FISA Court later determines that the procedures were not reasonably designed to target people outside of the United States or to adequately minimize the use of information about U.S. persons. It is important to note that, under this provision, if the government acts to address the Court's concerns and correct these procedures it would then be free to use and disseminate the information it acquired.

This is not a novel application of law under FISA. FISA's existing emergency provision holds that if the government begins emergency surveillance without a warrant, and the FISA Court then determines the surveillance to be unlawful, the government cannot use and disseminate the information it acquired except under very limited circumstances. Senator Feingold's amendment simply applies these reasonable safeguards to the new and broadly expanded authority we are now giving to the government. This provision represents a crucial safeguard for the protection of Americans' privacy rights.

#####

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee
On Amendment 3913 On Reverse Targeting
February 11, 2008

The bill we are now considering will provide an enormous expansion of the government's ability to conduct warrantless surveillance. I support providing our intelligence agencies with the flexibility they need to surveil foreign targets that may be intending us harm, but we must be similarly vigilant in making certain that this surveillance is limited to its intended scope.

I want to commend Senator Feingold in crafting an amendment that would prohibit what is known as "reverse targeting" and would ensure that this new surveillance is directed only toward its overseas targets and not toward surveillance of innocent Americans without a court order. The Intelligence Committee's bill, S.2248, requires the government to seek an order from the FISA Court only when "the" purpose of the government's acquisition is the targeting of Americans inside of the United States. I fear that the government will read into this language a loophole and it may justify eavesdropping on American's private communications, without any court order, as long as they have some interest in an overseas "target," even if a significant purpose of the interception is to collect the communications of a person in the United States. Is this fear legitimate? I think so, given this administration's history of convoluted, disingenuous legal interpretation. We must be clear in our language, because we know what they will do if we are not.

Senator Feingold's provision would clarify that if the government intercepts the communications of a person overseas but "a significant purpose" of the surveillance is to collect the communications of the United States person with whom the person overseas is communicating, the government must get a court order. This is an important distinction. In light of the sweeping powers we are granting to the government to conduct surveillance without up front court review, we must also cabin

the scope of the government's power to eavesdrop on the communications of innocent Americans.

#####

Statement Of Sen. Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
On S. Amdt. 3920, The Whitehouse Amendment
On Minimization Compliance Review
February 4, 2008

The bill we are now considering gives the executive branch unprecedented authority to conduct warrantless surveillance. It would permit the government, while targeting overseas, to review more Americans' communications with less court supervision than ever before. I support surveillance of those who might do us harm, but we also have to protect Americans' civil liberties. One of the most important ways to provide that balance is to ensure a meaningful role for the courts in supervising this new authority.

Unfortunately, the Protect America Act severely diminished the Foreign Intelligence Surveillance Court's role as a check and balance on the executive branch. Under the Protect America Act, the FISA Court cannot conduct oversight over whether the executive branch is complying with the "minimization" rules that are a crucial protection for Americans whose communications are incidentally picked up by government surveillance of overseas targets. Judicial oversight of how these safeguards are working is a critical protection of the privacy of U.S. persons in this area.

I want to praise Senator Whitehouse, who as member of both the Judiciary Committee and the Select Committee on Intelligence did so much work to reverse the courts diminished role and to craft this fundamental provision. His amendment, which was part of our Judiciary

bill, would ensure that the FISA Court has the authority it needs to assess the Government's compliance with minimization procedures, to request the additional information it needs to make that determination, and to enforce compliance with its orders. It would make certain that the FISA Court has a meaningful role in overseeing this new surveillance authority.

Minimization procedures are a key protection – indeed virtually the only protection – for the privacy of the conversations of people in the United States that are “incidentally” collected as part of this broad new surveillance authority. These could well be completely innocent Americans who happen to be talking to someone overseas. FISA Court oversight of minimization procedures is critical. Without this amendment, the FISA legislation would allow the Court to review minimization procedures, but it would not give authority to assess whether the government is complying with those procedures, nor would it permit the Court to take any action to correct failure to comply with those procedures. This is a crucial amendment and I urge Senators on both sides of the aisle to support it.

#####

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
On S. Amdt. 3930 Offered By Senator Cardin (D-Md.)
February 4, 2008

I think we all recognize that this legislation would provide broad and untested new powers to the executive branch. We are willing to do that in order to protect our national security. But this surveillance does not just affect foreign targets; it also affects the privacy rights of potentially millions of American citizens. That is why it is so important that we get this right. And that is why I support Senator Cardin's amendment,

which would reduce the sunset provision of this bill from six years to four years.

We are dealing with untested procedures; we have no assurance that what we are doing now will properly protect national security or the privacy rights of Americans. Many questions remain about how the new authorities that Congress is prepared to grant will be implemented, whether they will be effective, and – equally important – the extent to which they will intrude on innocent conversation of Americans. As we understand more about these authorities – and perhaps as technology allows us to improve our approach to this important surveillance – the executive branch and the Congress should reevaluate these sensitive authorities.

There is too much here that is new and untested to allow the authorities to go longer than even the expiration of the next President's term before requiring a thorough review. A four-year sunset makes sense. It will allow the next President three years of experience under these authorities to monitor how these new powers are being carried out. And it is an appropriate time for the Congress to evaluate whether the legislation strikes the right balance between national security needs and Americans' civil liberties.

#####

Statement Of Senator Patrick Leahy (D-VT),
Chairman, Senate Committee on the Judiciary,
On S. Amdt. 3979, the Feingold-Webb-Tester Sequestration
Amendment
February 4, 2008

I support providing the government with the flexibility it needs to conduct important surveillance of overseas targets. Both the Intelligence Committee and the Judiciary Committee's versions of this bill would allow the government to intercept all communications of overseas targets, including those communications with people inside of the United States. However, this also means that the government will necessarily be acquiring the communications of innocent Americans.

I want to commend Senators Feingold, Webb, and Tester for crafting an amendment that will help to safeguard the privacy rights of innocent Americans whose communications are acquired during the surveillance of overseas targets. This new FISA legislation will grant the government authority to conduct surveillance on overseas targets concerning "foreign intelligence." This term covers a broad range of subjects and the new authority would permit the government great latitude to intercept communications without a court order. Once Americans' communications are collected, they can be shared widely with other agencies. This Feingold-Webb-Tester provision permits unfettered acquisition of foreign-to-foreign communications and of communications of suspected terrorists into or out of the United States while creating safeguards for communications not related to terrorism that the government knows have one end in the United States. If the government is not able to determine beforehand whether a communication will be into or out of the United States, it can acquire all of those communications without prior court approval. What this amendment does is add the very reasonable protection that if it is later determined that a communication involves a person in the United States, measures will be taken to segregate that information to assure that privacy is protected appropriately. There are exceptions even then to make sure that national security is never placed at risk. If the communication involves terrorism or a suspected terrorist, if someone's safety is at stake, the government can then access, analyze and disseminate that communication.

This amendment is an important check to ensure that the new authority we will grant with this bill is used as intended. Without it, many law-

abiding Americans who communicate with completely innocent people overseas will be swept up in this new form of surveillance, with virtually no judicial involvement or oversight.

#####

Statement Of Sen. Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
On The Kennedy/Leahy Inspector General Review Amendment
(Am. 3862),
To The FISA Amendments Act Of 2007, S. 2248
January 24, 2008

Senator Kennedy and I have offered this important amendment to ensure that there will be some measure of accountability for the unlawful actions of this administration in the years following 9/11. Regrettably, those opposing this common-sense review have so far succeeded in stopping the full Senate from even considering its merits.

It is a sad day for the American public when its elected officials stonewall a measure designed to shed light on the government's efforts to unlawfully spy on its own citizens. I urge Senators across the aisle to allow this amendment to be called up, debated, and given an up-or-down vote.

As we all now know from press accounts, in the years after 9/11, the government secretly conducted surveillance on its own citizens on a massive scale through what has become known as the Terrorist Surveillance Program (TSP). It was done completely outside of FISA, the law specifically drafted to regulate such conduct. And it was done without the consent or even the knowledge of the United States Congress. It is crucial that Congress and the American people understand why and how these decisions were made, both in the months

after 9/11, and in the several years following that difficult time. This Inspector General review amendment will provide that accountability.

This review would be conducted jointly by the Offices of Inspectors General of each component of the Intelligence Community that may have played any role in the TSP, including the Inspector General of the Department of Justice. It will examine the circumstances that led to the approval of the TSP, as well as any procedural irregularities that may have taken place within the Department of Justice Office of Legal Counsel – the part of the Justice Department that is supposed to give unvarnished legal advice to the President. It will result in a final report to be submitted to the Intelligence and Judiciary Committees in the House and Senate within 180 days, containing recommendations and a classified annex. There has been no such comprehensive review to date.

This amendment is particularly important because the administration and some of its allies in Congress are relentlessly arguing for retroactive immunity for the 40 or so lawsuits against those telecommunications companies that may have assisted in conducting this secret surveillance. They are trying to shut down avenues for investigating and determining whether their actions were lawful. This amendment will ensure that there will be an objective assessment of the lawfulness of the secret spying program and the manner in which the government approved and carried out the program.

Critics of the amendment claim that Congress has already conducted sufficient oversight of the TSP, and that no further review is warranted. That is simply not true. Only a small number of Senators and Representatives have been granted access to classified documents related to the TSP. Those of us who have been granted access can provide a measure of oversight by reading through documents to try to piece together how the government decided to spy on its own citizens, for years, and how the Justice Department came to bless this unlawful conduct. But the documents don't tell the full story. As we learned from Jack Goldsmith, the former head of the Office of Legal Counsel, the President's program was a "legal mess" when he took over. It is crucial

to understand how this “legal mess” got approved in the first place. Who was responsible? Were the normal procedures followed at the Office of Legal Counsel? And, perhaps most importantly, how can we stop something like this from ever happening again?

This amendment is one of the many improvements to the Senate Intelligence bill that were adopted by the Judiciary Committee and included in the Judiciary Committee’s substitute amendment. Regrettably, that substitute was tabled by the Senate earlier today. I urge Senators to reconsider their votes with respect to this simple but critically important accountability measure.

If the critics succeed in quashing not only the outstanding lawsuits seeking accountability, but also congressional efforts to arrive at the truth through a comprehensive review of the TSP, the American public will never forgive us. This administration is hoping it will end its time in office without any meaningful review of its more than five years of illegal surveillance. We must not let this happen. I urge all Senators to support this common sense amendment to ensure accountability.

#####

Statement Of Sen. Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
On The Feingold Amendment (Am. 3909),
To The FISA Amendments Act Of 2007, S. 2248
January 24, 2008

I support Senator Feingold’s amendment to provide Congress with additional materials from the FISA Court to enable Congress to conduct more effective oversight. This amendment is one of the many improvements to the Senate Intelligence bill adopted by the Judiciary Committee and included in the Judiciary Committee’s substitute amendment. Regrettably, that substitute was tabled by the full Senate

earlier today. But I urge Senators to reconsider their votes with respect to this simple but critically important reporting requirement.

Under current law, semi-annual reporting requirements allow the government to wait up to a year before informing the Congress about important interpretations of law made by the FISA Court. The Senate Intelligence bill took a step in the right direction by requiring that Congress be provided with the orders, decisions and opinions of the FISA court that include significant interpretation of law within 45 days after they are issued.

Senator Feingold's amendment would go a step further to ensure sound oversight by Congress of the activities of the FISA Court. It would require that, when the FISA Court issues an opinion containing a significant legal interpretation, the government must provide Congress with the government's pleadings related to the case. This is critically important because, where the FISA Court simply adopts the government's reasoning in one of its decision, Congress will have no way of knowing the true basis for the court's ruling without access to the government's pleadings.

The Feingold amendment would also require that Congress now be provided with any significant interpretations of law by the FISA Court that were not provided to Congress over the past five years. Access to past jurisprudence, as well as current decisions, is critical to Congress' understanding of how FISA is being interpreted and implemented.

Opponents of this amendment say that it may create additional "paperwork." But if Congress can be better informed about the workings of the FISA Court – a court Congress created – and can more effectively oversee the government's advocacy in that Court, then any incremental additional paperwork is clearly in the best interests of the American public. Opponents also say that the pleadings may reveal sources and methods, and therefore cannot be turned over to the Congress. This is a red herring. As Senator Feingold has stated

repeatedly, this amendment is not intended to compel disclosure of this kind of information, and nothing in the amendment could be construed to change the time-tested practice of redacting information that could reveal sources and methods.

I urge all Senators to support the Feingold amendment, and to reject any attempts to water down this important reporting requirement by way of second-degree amendments.

#####

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
On The Judiciary Committee's Proposed Amendment To
The FISA Amendments Act Of 2007, S.2248
January 24, 2008

As Prepared

Mr. President, I speak today in support of the Judiciary Committee's amendment to the FISA Amendments Act of 2007, which the Select Committee on Intelligence reported last fall. The Judiciary Committee amendment would make important improvements to the Intelligence Committee bill, while maintaining its structure and authority. The so-called Protect America Act was rushed through the Senate last summer in an atmosphere of fear and intimidation. It was a bad bill that has provided sweeping new powers to the government. It imposes no checks on the government, and provides no oversight or protections for Americans' privacy. The Intelligence Committee did important work last fall in crafting a bill that begins to walk back the excesses of the Protect America Act.

Two committees in the Senate have jurisdiction over FISA -- the Intelligence Committee and the Judiciary Committee. The Intelligence Committee acted first, and established a good structure for conducting

critical overseas surveillance. The Judiciary Committee's amendment maintains that structure and the authority for surveillance. However, in my view, and the view of many Senators, the Intelligence Committee bill does not do enough to protect the rights of Americans. Indeed, many members of the Intelligence Committee voted for that bill knowing that the Judiciary Committee would have an opportunity to improve it – and they expected that to happen.

FISA is among the most important pieces of legislation Congress has passed. It is there to provide a mechanism to conduct surveillance that is critical to our security, but also protect the privacy and civil liberties of all Americans. Let's be clear – this new authority expands FISA to allow more flexibility to conduct surveillance. We have to take great care to protect Americans' civil liberties. That is what the Judiciary Committee's amendment adds.

I want to praise our joint members, Senators Feinstein, Feingold, and Whitehouse, who, as members of both the Judiciary Committee and the Select Committee on Intelligence contributed so much to the Judiciary Committee efforts to improve this legislation, and who have worked with me to author many of the additional protections that we adopted and reported. These Senators and others on the Judiciary Committee worked hard to craft amendments that preserve the basic structure and authority proposed in the bill reported by the Select Committee on Intelligence, while adding crucial protections for Americans.

The Judiciary bill makes about 12 changes to the Intelligence Committee's bill, and I would like to address a few of them. First, the Judiciary amendment contains a strong "exclusivity" provision. This provision makes clear that the government cannot claim authority to operate outside the law -- outside of FISA -- from legislative measures that were never intended to provide such exceptional authority. This administration argues that the Authorization for the Use of Military Force (AUMF), passed after September 11, provided the justification for conducting warrantless surveillance of Americans for more than five years. I introduced a resolution concerning this in the last Congress,

when we were first presented with this absurd argument. When we authorized going after Osama bin Laden, the Senate did not authorize – explicitly or implicitly – the warrantless wiretapping of Americans. Yet this administration still clings to this phony legal argument. The Judiciary bill would prevent that dangerous contention with strong language reaffirming that FISA is the exclusive means for conducting electronic surveillance for foreign intelligence purposes. The Intelligence Committee’s bill would do nothing to preclude the AUMF argument in the future.

The Judiciary bill would also provide a more meaningful role for the FISA Court in this new surveillance. The Court is a critical, independent check on government excess in the very sensitive area of electronic surveillance. The fundamental purpose of many of the Judiciary Committee changes is to assure that this important independent check remains meaningful, while maintaining the flexibility of “blanket” orders from the Intelligence Committee bill, which we all agree are necessary. The Intelligence Committee bill, although it improves on the Protect America Act, would give the FISA Court only a very limited role in overseeing the surveillance.

The Judiciary bill would give the FISA Court the authority it needs to assess the government’s compliance with minimization procedures, request additional information from the government, and to enforce compliance with its orders. It would also give the Court the discretion to impose restrictions on the use and dissemination of Americans’ information if it was collected unlawfully.

The Judiciary bill would make other important changes. It reduces the sunset for this new law from six years to four. There is too much here that is new and untested to allow the authorities to go longer than even the next President’s term before requiring a thorough review. It clarifies that the bill does not allow bulk collection that would simply sweep up all calls into or out of the United States. It also clarifies that the government may not use this new authority to target Americans indirectly when it cannot do so directly. The administration says it will

not do that, but the Intelligence Committee's bill does nothing to prevent it.

Finally, the Judiciary Committee's bill would include a requirement that Inspectors General, including the Department of Justice Inspector General, conduct a thorough review of the so-called Terrorist Surveillance Program and report back to the Congress and, to the greatest degree possible, the American people. The Department of Justice Inspector General will have the responsibility to look at, among other things, the process at the Department of Justice that limited knowledge and review of important legal decisions to a tiny group of like-minded individuals, at great cost to rule of law and American values. This is a key measure to finally require accountability for this administration. We have not yet had anything close to a comprehensive examination of what happened and how it happened. We cannot expect to learn from mistakes if we refuse to allow them to be examined.

As I have made clear, I strongly oppose the provision in the Intelligence Committee bill that would grant blanket retroactive immunity to telecommunications carriers for their warrantless surveillance activities from 2001 through earlier this year, contrary to FISA and in violation of the privacy rights of Americans. That provision goes even beyond even the so-called Protect America Act. It would insulate this administration from accountability for its lawbreaking. The Judiciary Committee bill contains no such provision.

With the authority of a majority of the Judiciary Committee members, I have made a few changes to the amendment that the Judiciary Committee reported in November. There are no major additions or deletions. The original 12 changes made by the Judiciary Committee are still there. The revised version makes some changes to address technical issues and concerns the administration has raised about our substitute. We have considered the Statement of Administration Policy sent last December and Judiciary Committee staff has had discussions with people from the administration. We have listened and made changes that we think address some legitimate concerns raised.

For example, we have revised the exclusivity provision. The provision in the earlier version of the Judiciary amendment could have been read to extend the scope of FISA in a way that was not intended. We corrected that. Another concern we addressed was about the issue of staying FISA Court decisions pending appeal. The Intelligence Committee bill would automatically stay FISA Court decisions, thereby requiring possibly illegal surveillance to continue throughout a lengthy appeal process. The original Judiciary Committee amendment left the decision about a stay to the discretion of the FISA Court judges – which is how it is typically done in courts. The administration was concerned that this left too much power to stop surveillance in the hands of a lone judge. We listened, and made a change that would permit the stay decision to be made – promptly – by a panel of the FISA Court of Review. Another change we made to address an administration concerns was in the important IG review provision. That provision now makes it clear that no department Inspector General has the authority to conduct a review of another department. These revisions make the Judiciary Committee’s product stronger.

This amendment contains important changes to the Intelligence Committee bill. They are changes that Senators will have to offer one-by-one if we do not pass this amendment. If we really want to get this FISA debate done quickly, adopting this amendment will save the Senate countless hours of debate. I urge my colleagues to support this amendment. But even if you cannot support it, I hope that you will make sure it is considered on its merits.

I believe it is important that we correct the excesses of the so-called Protect America Act. The Judiciary Committee has done good work in reporting protective measures to the Senate to add balance to the surveillance powers of the government and to better ensure the rights of Americans. I urge my colleagues to support this amendment.

#####