PRESS CONFERENCE WITH MAJORITY LEADER

STENY H. HOYER

***

Tuesday, March 11, 2008

1:19 p.m.

Mr. Hoyer. Let me thank you for being here. As you will note, I've been joined by the Democratic Whip and by Chairman Conyers and Chairman Reyes.

We are going to talk about FISA in just a minute, but I wanted to open up today -- tomorrow, we're going to be doing the budget. The budget, as you know, is a document which we believe reflects the priorities of our country. It also rejects the misguided suggestion of the President of the United States to cut very deeply into health care issues, into veterans' issues and into State and local law enforcement, emergency responders.

Our budget reflects priorities of education, innovation, energy, infrastructure; and our budget also provides for robust defense spending to defend our country. It also provides for middle-class tax relief done in a fiscally responsible manner, which is one of our priorities.

That budget, as I said, will be on the floor tomorrow.

We expect there to be a number of alternatives offered as well. I think the Congressional Black Caucus will have an alternative. We expect the Republicans to have an alternative, and the Progressive Caucus may also have an alternative. Those four alternatives will be considered.

I would like to go directly to the Foreign Intelligence Surveillance Act.

Would somebody turn down the heat?

Q Four Members of Congress, more than just one. You get more hot air; right?

Mr. Hoyer. Could he be banned?

Either that or we have a lot more members of the press here. Take your pick.

I'm sure everybody will have their own perspective on where the hot air comes from, but, in any event -- FISA, the Foreign Intelligence Surveillance Act, a very, very important piece of legislation with which we have been dealing with for a very extended period of time now.

I have been very much involved in this, as all of you know. I have worked very closely with Chairman Conyers and Chairman Reyes. Obviously, Whip Clyburn has also been involved in this and will be working this matter on our votes.

But I wanted to take this opportunity, as we discussed this with the Caucus just an hour ago, to have Chairman Conyers and Chairman Reyes explain to you what -- the new piece of legislation that the amendment to the Senate-passed -- the Senate-passed House bill which they amended which we will be offering amendments to as essentially a substitute for that.

So let me turn to Chairman Conyers so he can explain to you what the committee is reporting out.

Mr. Conyers. Thank you Mr. Leader, Mr. Whip, my fellow Chairman.

Ladies and gentlemen, we have been, since February 15th, when

the Protect America Act expired, been working with the Senate, both Judiciary and Intelligence Committees, with Judiciary and Intelligence Committees on the House, with the valued input of the leader. Steny Hoyer has been very, very excellent on this. All of his lawyering skills across the years have come to the fore on this, and we are grateful for it.

But the whole idea is to try to come together and have a pre-conference. We've been working at this, Republicans, Democrats, both sides of the House, both committees. We've had some reasonable success. Republican attendance has been wanting a fair amount of the time, but we feel that it is very important that before we leave on this recess that we come forward and push this subject matter as far as we can.

We've been negotiating. Jay Rockefeller has been very, very helpful; and I think this description of the three titles is excellent.

The one thing that we've added, of course, is the national commission, which is patterned after 9/11. It was effective for them. We will have the Speaker and the majority leader and the bipartisan commission that would take some of the pressure by looking back. Some going forward, but much of it looking back. Because all four committees are really pressed with the rest of our agenda to try to deal with this on a day-by-day, week-by-week basis. So we think this is a tremendous idea.

What we know is that we are not going to cave in to a

retroactive immunity situation. There's got to be a way out of it. We think Title II gives us this way out by letting the courts deal in camera with the State secrets defense that prevents us from hearing the telecommunications companies explain why they feel very strongly that they haven't broken the law. We don't know. There is no law school example in our memory that gives retroactive immunity for something you don't know what you have give it for. I mean, that just doesn't work in the real world or on the Hill, either.

So what we are doing now, we are ending reverse targeting. We've actually built on the Restore Act; and we think now that, with a continued cooperation, we can keep our meetings going. We will have something that we can bring together at least as many of the Senate Members that are willing and lead us into a conference. We are not -- this isn't a conference we are holding. We are just holding meetings trying to push this difficult ball down the road a little further.

So, essentially, we've built on the Restore Act. We made Title I -- there is more agreement on that than anything else, and we think that Title III will be favorably received, and we still keep inviting our chairman and ranking members to our meetings.

Mr. Hoyer. Mr. Reyes.

Mr. Reyes. I will just add a couple of points.

The first one is how hard the staffs worked to craft this piece of legislation -- the Intelligence, the Judiciary, and the

leadership staff.

And the other point is one that, for us, it's vitally important that we do our job. This is a product of working in the regular process manner, going through and trying to find common ground so that we could protect this country and also protect the constitutional rights of Americans.

I made the point -- and I'll close with this -- I made the point that I come from a State where the second amendment is very important, the right for us to keep and bear arms. But the second amendment would pale if the Protect America Act becomes the permanent FISA revision, because government in the future would be able to monitor and tell every step that any citizen is making. And for me that is extremely important for people to understand. That the second amendment, guns would become irrelevant simply because we would have a choke-hold because of the authorities that we give government to monitor and to be able to surveil every step that any American takes under the Protect America Act.

So I think this is a good balance. Not everybody is going to be happy with it, but compromise is not about making everybody happy. It's about finding common ground where we can proceed with giving our intelligence community the tools that they need to keep us safe, protect our national security and also protect the rights of individual Americans.

Mr. Hoyer. Mr. Clyburn?

Mr. Clyburn. I don't have anything to add. I want to thank

both Chairs for just some tremendous work. I want to thank you, Mr. Leader.

We met this morning before the Caucus meeting with members of the Progressive Caucus. There is great support among those members we met with for this legislation, and you heard in the meeting of the Caucus that there is great support for this. And I want to thank all three of you for making this a little easier for me than it was about 48 hours ago. And would y'all do the same thing with the other two pieces of legislation that we have out there?

Mr. Hoyer. I don't know how many of you saw the Wall Street Journal yesterday. The headline is "NSA domestic spying grows as agency sweeps up data." The second headline says: Terror fight blurs line over domain, tracking e-mail, et cetera. And then this little box here talks about the collection of e-mail, Internet, cell phone, phone, financial airline records.

What we have tried to do is to assure the intelligence community has the ability to collect the information necessary to protect our country and our people. Everybody believes that's a priority. We believe we can do that consistent with the Constitution if the parameters are set in a way that both the intelligence community, the telecom companies and the administration understand what the rules are and pursue them.

We were very receptive as well to the concern of the telecom companies. They were asked by the administration to cooperate in

the national interest. They believed that's what they did. They were put in an almost untenable position, however, in having suits filed against them to which they could not give answers; and the reason they couldn't give answers is because the administration was claiming, perhaps properly so, that some of the items that would be used to rationalize and explain the telecoms' actions were documentations that were judged to be secret by the administration.

What the committee did was to provide for the use of such secret documents in secret -- not to be exposed -- in secret by the court as the courts do on a number of occasions on an annual basis so that they can properly make their case. We think that's appropriate.

On the other hand, we think it is also appropriate that the rules under Title I not only facilitate the intelligence community and fix the technological problem of having a U.S. switch but also to ensure that there is court review of processes that are pursued to ensure that, as they've collected this overwhelming amount of information, that the rights of Americans are not the price we pay for keeping ourselves safe. We believe we can do both.

The last thing that was added, and I congratulate the committees for suggesting this, is a commission. That commission will be authorized and asked to look at what has been done and what needs to be done in the future in drawing this balance.

The 9/11 Commission I think most of us thought was very

useful in looking at what had been done and then what ought to be done. Using that example of success in my opinion. As you know, one of the first things we did when we came to Congress in our Six for '06, H.R. 1, was to adapt the balance of the proposals made by the 9/11 Commission. We found that very useful, and we think it was very useful to the country, and we think this commission will be as well.

We are hopeful that we pass this. It would be incorrect to say that there is agreement between the House and the Senate because, as Chairman Conyers pointed out, this is not a conference. We lament the fact that we haven't gone to conference, frankly, and I wish we had gone to conference, but this is the next step, as the Chairman said, in moving the ball forward.

I want to reiterate that we believe right now FISA empowers the administration and the telecoms to cooperate consistent with the FISA statute in protecting our country.

I might say that this statute also proposes, as the Protect America Act proposed, that assuming compliance with this statute, the telecoms will have full immunity, as is appropriate.

Questions?

Q What is the road map to get this to the floor now?

Mr. Hoyer. Well, we hope to bring it to the floor under a rule on Thursday.

Q Could you explain what the difference is substantively

on this State secrets thing, immunity? It's my understanding that judges can hear evidence ex parte and in camera on State secret cases already but often or usually don't. So what is it in your bill that supports that or makes that more of a requirement?

Mr. Conyers. Well, we specifically agree that this would be the way to deal with State secrets which prevent us from determining whether or not immunity is appropriate for the telecoms.

Q Does it compel the judges to hear the evidence? Do they have the option not to?

Mr. Conyers. No, no, it would be discretionary with the court. But, obviously, when the government comes in raising the fact -- the assertion of State secrets, then there's no way for the telecoms to appropriately respond. They say they've got a good response, but the government is blocking it. And so this way compromises it. It takes it out of FISA, takes it out of the Congress, puts it in the courts system. And the plaintiffs have their day -- telecom plaintiffs have their day in court.

Q So does it just encourage the judges to use their powers vis-a-vis the State secrets privilege or is there some other stronger --

Mr. Conyers. Oh, there is no hammer here. We don't want to go into a courtroom and tell the judge when or when not they will use ex parte proceedings.

Q My understanding is correct? They can use it right now?

Mr. Hoyer. They can do it in criminal cases but not in civil cases, I'm informed. This is a civil case, and this authorizes them to do it in a civil case.

Obviously, from my perspective and I think our perspective, the telecoms are put in a very difficult position if, on the one hand, they claim that they acted properly and, on the other hand, they can't produce the documentation on which they rely to prove that point. You have to do one or the other. The telecoms believe they have done nothing wrong, and they ought to have that opportunity to show that without obviating other process.

Q Mr. Leader, does this bill reflect a political judgment that this is not something that is going to come back to bite the Democrats next fall in the elections? That this would not be something that you would hear being used politically against you?

Mr. Conyers. In what way?

Q In the sense that it doesn't include the immunity President Bush says is absolutely necessary if there is to be cooperation in the future.

Mr. Conyers. Well, we can't immunize against that which we do not know what we're granting immunity for. That's one of the earliest things to come out of law school. You have got to -- if we knew what they were asking immunity for, we might agree or we wouldn't agree. But, right now, we don't know.

Q But what I'm asking is, are Democrats risking getting beat up on this?

Mr. Hoyer. Well, I think Democrats always risk getting beaten up. That's the process in which we are involved.

But what I think this bill does -- first of all, in addition, I don't think this has been mentioned. We make it very clear in this legislation that if the telecoms responded under the Protect America Act which sunsetted and is not now in full force and effect, any action that they took and any action they are responding to now consistent with that, they are immune now. So any time after it sunsetted, if they acted pursuant to that, they are immune. To give them full confidence that they can move forward.

Number two, I believe -- and I told this to the telecom companies. I believe the telecom companies patriotically want to participate in protecting our country. I have no doubt about that. However, they need and the administration needs and we all need clear guidelines within which to do that. Not just simply an administration going off with a program that it invents without any constraints and gathers the kinds of information of which the Wall Street Journal is talking.

I think our citizens expect us to protect their private records while, at the same time, expecting us to facilitate, to work with the intelligence community to protect them. I think that's what we've done.

Is somebody going to criticize it? I'm sure they will. The administration's position has been very little movement at all in

terms of trying to come to agreement. We think that's unfortunate. This matter is a critical and important matter; and, very frankly, we think the administration and the Republicans took a very contradictory position of saying, on the one hand, if the Protect America Act sunsets, the country is going to be in danger and then, to a person, opposing the extension of the Protect America Act. That does not make logical sense to anybody, in my opinion.

So we will have some responses. We are hopeful that this can move ahead. We are hopeful that it passes the House and goes to the Senate. I'm sure the Senate is going to have and discussions about it, and we want to try to get to agreement so that we can get a bill enacted just soon.

Q Mr. Clyburn, you said it was well received in conference this morning. Are the Blue Dogs on board? And did you talk to them?

Mr. Clyburn. I've talked to many Blue Dogs. Yes.

Q And do you feel confident that it will pass?

Mr. Clyburn. I feel very confident.

Q That you will be able to pass it?

Mr. Clyburn. Yes.

Q Mr. Hoyer, other than foreign communications, does your newly crafted bill require a court order before you begin any collection or surveillance?

Mr. Hoyer. You have to have prior court approval of the

procedures you follow. The Senate bill had after-the-fact. That's a difference between the two bills. However, this is approval, as Restore was, of procedures; and where you still have the opportunity to get -- correct me if I am wrong -- broad-based approval of the procedures you follow as opposed to the particular target, foreign target.

Am I correct on that? Okay.

Q You would have a basket of targets?

Mr. Hoyer. Al Qaeda, as an example.

Q This is almost certainly going to face a veto, and Bush has made it very clear on immunity. So why offer a bill that he is going to not sign?

Mr. Conyers. Because it is our best way to resolve this matter, notwithstanding the President's threat. This is a reasonable, intelligent way to proceed without jeopardizing our responsibilities to fight terrorism.

You know, the State secrets, this is a blanket as long as you want to make it; and it's very imprecise. So what -- all we are saying is that this is the best way -- if there is some other way that we can get the telecoms to have their day in court and if there is some other way for us to find out what it is they want retroactive immunity for, this is the only way that we've come up with.

Mr. Hoyer. We have just a couple of minutes left on a vote, so we will have to cut this short, unfortunately. But let me say

to you that the President's position was that the telecom companies participated; his proposition was they needed, therefore, immunity. The President's position can be either because he believes that they acted properly and deserve immunity or, frankly, the only alternative one could draw, if one were cynical, is that perhaps they are not sure that these were done properly and don't want them looked at and therefore simply wanted cases to go away.

This is an attempt to reach a compromise with giving the telephone companies what they ought to have; and that is the right to say, yes, we did this properly. And to have a third party -- that's our system in America -- courts look at and resolve these disputes. This gives them the opportunity to do it.

In Title I, which is about protecting America, we think it's very perverse that the President of the United States would take the position that we are not going to have going forward a statute which allows us to protect America and cures the American switch problem, which this does, because the Congress wants to resolve in a different way the issue of what happened in the past.

Q Mr. Hoyer, before you go, on the ethics, how did the Caucus greet your newest ethics proposal and what does it look like tonight?

Mr. Hoyer. Well, I think we're going to see pretty soon how they greet it.

Q It is still unclear?

Mr. Hoyer. Well, I think that we are going to present it tonight. I think we will get the votes. Mr. Clyburn is the vote counter.

Mr. Clyburn. We're getting there.

Q Is there any reason to think that the AMT fight is going to resolve itself any differently this year than it did last year?

Mr. Hoyer. Well, of course, there wasn't a reconciliation last year.

[Whereupon, at 1:45 p.m., the press conference was concluded.]