CONCLUSION OF MORNING BUSINESS

The PRESIDENT pro tempore. Is there further morning business?

If there is no further morning business, morning business is closed.

USA PATRIOT ACT OF 2001

The PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to consideration of H.R. 3162, which the clerk will report.

The bill clerk read as follows:

A bill (H.R. 3162) to deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes

The PRESIDENT pro tempore. The senior Senator from Vermont, Mr. LEAHY, is recognized.

Mr. LEAHY. Mr. President, what is the time agreement that we now have before us?

The PRESIDENT pro tempore. The chairman and ranking member of the Judiciary Committee have 90 minutes each; the Senator from Michigan, Mr. LEVIN, has 10 minutes; the Senator from Minnesota, Mr. WELLSTONE, has 10 minutes; the Senator from Maryland, Mr. SARBANES, has 20 minutes; the Senator from Wisconsin, Mr. FEINGOLD, has 1 hour; the Senator from Florida, Mr. GRAHAM, has 15 minutes; and the Senator from Pennsylvania, Mr. SPECTER, has 15 minutes.

Mr. LEAHY. I thank the Presiding Officer, the President pro tempore of the Senate.

Mr. President, I yield myself such time as I may need out of my 90 minutes.

Mr. REID. Will the Senator yield?

Mr. LEAHY. Of course.

Mr. REID. Mr. President, I ask unanimous consent that during the day, when quorum calls are initiated, the time be charged proportionately, not only against the person who asked for the quorum to be initiated, but that it be charged proportionately against all people who have time under the agreement that is now in effect.

The PRESIDENT pro tempore. Is there objection?

The Chair hears no objection. That will be the order of the Senate.

The Senator from Vermont, Mr. LEAHY, is recognized.

(Mrs. CLINTON assumed the chair.)

Mr. LEAHY. Thank you, Mr. President. I agree with the distinguished Democratic leader in his request because we do want to have discussion of this piece of legislation, but there is no question we will vote on this piece of legislation today and we will pass this legislation today.

I think it is only fitting the Senator from New York is now in the chair as we begin discussion of this legislation because her State was one of those that was badly impacted, terribly impacted, tragically impacted on September 11, as were the people of New Jersey and Connecticut, who worked in the World Trade Towers, and, of course, those at the Pentagon in Virginia, including those in Maryland and the District of Columbia, and actually the whole Nation.

Today we consider H.R. 3162, the second House-passed version of the "Uniting and Strengthening of America Act" or "USA Act of 2001." Senate passage of this measure without amendment will amount to final passage of this important legislation, and the bill will be sent to the President for his signature. We complete our work six weeks after the September 11 attacks and months ahead of final action following the destruction of the Federal Building in Oklahoma City in 1995. The American people and the Members of this body deserve fast work and final action.

On October 4, I was pleased to introduce with the Majority Leader, Senator DASCHLE, and the Chairmen of the Banking and Intelligence Committees, as well as the Republican Leader, Senator LOTT, and Senator HATCH and Senator SHELBY, the Uniting and Strengthening America, or USA Act. This was not the bill that I, or any of the sponsors, would have written if compromise was unnecessary. Nor was it the bill the Administration had initially proposed and the Attorney General delivered to us on September 19, at a meeting in the Capitol.

We were able to refine and supplement the Administration's original proposal in a number of ways in the original USA Act, and have continued that process in the development of H.R. 3162. The Administration accepted a number of the practical steps I had originally proposed on September 19 to improve our security on the Northern Border, assist our Federal, State and local law enforcement officers, and provide compensation to the victims of terrorist acts and to the public safety officers who gave their lives to protect ours. This final version of the USA Act further improves the compromise by including additional important checks on the proposed expansion of government powers that were not contained in the Attorney General's initial proposal.

Let me outline just ten ways in which we in the bicameral, bipartisan negotiations were able to supplement and improve this legislation from the original proposal we received from the Administration.

We improved security on the Northern Border;

We added money laundering.

We added programs to enhance information sharing and coordination with State and local law enforcement, grants to State and local governments to respond to bioterrorism, and to increase payments to families of fallen firefighters, police officers and other public safety workers;

We added humanitarian relief to immigrant victims of the September 11 terrorist attacks;

We added help to the FBI to hire translators;

We added more comprehensive victims assistance;

We added measures to fight cybercrime;

We added measures to fight terrorism against mass transportation systems;

We added important measures to use technology to make our borders more secure;

Finally, and most importantly, we were able to include additional important checks on the proposed expansion of government powers contained in the Attorney General's initial proposal.

In negotiations with the Administration, I did my best to strike a reasonable balance between the need to address the threat of terrorism, which we all keenly feel at the present time, and the need to protect our constitutional freedoms. Despite my misgivings, I acquiesced in some of the Administration's proposals to move the legislative process forward. That progress has been rewarded by a bill we have been able to improve further during discussions over the last two weeks.

The Senate passed the original version of the USA Act, S. 1510, by a vote of 96-1 on October 11. The House passed a similar bill, based largely on the USA Act, the following day. The Majority Leader and I both strongly believed that a conference would have been the better and faster way to reconcile the differences between the bills, and to consider the proposals that had been included in the managers' amendment to S. 1510, which Republicans did not approve in time for consideration and passage with the Senate bill. The House did not request a conference when it passed the bill, however, and despite the understanding among House and Senate leadership, the House leadership abruptly incorporated the product of our discussions in a new bill rather than proceed to a quick conference.

Yesterday, the House passed H.R. 3162, which was based upon informal agreements reached by Senate and House negotiators, but which did not include additional important provisions to make the Justice Department more efficient and effective in its anti-terrorism efforts and to reduce domestic demand for illegal drugs, some of which are produced and supplied from Taliban-controlled regions of Afghanistan. I am disappointed that the commitment we received to hold a conference—at which these proposals could have been considered more fully—was not honored. Nonetheless, H.R. 3162, which the House passed yesterday, contains additional improvements to the USA Act that had been negotiated on a bicameral, bipartisan basis, and deserves the support of the Senate.

I do believe that some of the provisions contained both in this bill and the original USA Act will face difficult tests in the courts, and that we in Congress may have to revisit these issues at some time in the future when the present crisis has passed, the sunset has expired or the courts find an infirmity in these provisions. I also intend

as Chairman of the Judiciary Committee to exercise careful oversight of how the Department of Justice, the FBI and other executive branch agencies are using the newly-expanded powers that this bill will give them. I know that other members of the Judiciary Committee—including Senator SPECTER, Senator GRASSLEY, and Senator DURBIN—appreciate the importance of such oversight.

The negotiations on anti-terrorism legislation have not been easy. Within days of the September 11 attacks, I began work on legislation to address security needs on the Northern Border, the needs of victims and State and local law enforcement, and criminal law improvements. A week after the attack, on September 19, the Attorney General and I exchanged the outlines of the legislative proposals and pledged to work together toward our shared goal of putting tools in the hands of law enforcement that would help prevent another terrorist attack.

Let me be clear: No one can guarantee that Americans will be free from the threat of future terrorist attacks, and to suggest that this legislation—or any legislation—would or could provide such a guarantee would be a false promise. I will not engage in such false promises, and those who make such assertions do a disservice to the American people.

I have also heard claims that if certain powers had been previously authorized by the Congress, we could somehow have prevented the September 11 attacks. Given this rhetoric it may be instructive to review efforts that were made a few years ago in the Senate to provide law enforcement with greater tools to conduct surveillance of terrorists and terrorist organizations. In May 1995, Senator LIEBERMAN offered an amendment to the bill that became the Antiterrorism and Effective Death Penalty Act of 1996 that would have expanded the government's authority to conduct emergency wiretaps to cases of domestic or international terrorism and added a definition of domestic terrorism to include violent or illegal acts apparently intended to "intimidate, or coerce the civilian population." The consensus, bipartisan bill that we consider today contains a very similar definition of domestic terrorism.

In 1995, however, a motion to table Senator LIEBERMAN's amendment was agreed to in a largely party-line vote, with Republicans voting against the measure. In fact, then Senator ASHCROFT voted to table that amendment, and one Republican colleague spoke against it and opined, "I do not think we should expand the wiretap laws any further." He further said that "We must ensure that in our response to recent terrorist acts, we do not destroy the freedoms that we cherish." I have worked very hard to maintain that balance in negotiations concerning the current legislation.

Following the exchange on September 19 of our legislative proposals, we have worked over the last month around the clock with the Administration to put together the best legislative package we could. I share the Administration's goal of providing promptly the legal tools necessary to deal with the current terrorist threat. While some have complained publicly that the negotiations have gone on for too long, the issues involved are of great importance, and we will have to live with the laws we enact for a long time to come. Demands for action are irresponsible when the roadmap is pointed in the wrong direction. As Ben Franklin once noted, "If we surrender our liberty in the name of security, we shall have neither."

Moreover, our ability to make rapid progress was impeded because the negotiations with the Administration did not progress in a straight line. On several key issues that are of particular concern to me, we had reached an agreement with the Administration on Sunday, September 30. Unfortunately, over the next two days, the Administration announced that it was reneging on the deal. I appreciate the complex task of considering the concerns and missions of multiple Federal agencies, and that sometimes agreements must be modified as their implications are scrutinized by affected agencies. When agreements made by the Administration must be withdrawn and negotiations on resolved issues reopened, those in the Administration who blame the Congress for delay with what the New York Times described as "scurrilous remarks," do not help the process move forward.

We expedited the legislative process in the Judiciary Committee to consider the Administration's proposals. In daily news conferences prior to the original passage of the USA Act, the Attorney General referred to the need for such prompt consideration. He made time to appear before the Judiciary Committee at a hearing September 25 to respond to questions that Members from both parties had about the Administration's initial legislative proposals. I thank the Attorney General for extending the hour and a half he was able to make in his schedule for the hearing for another 15 minutes so that Senator FEINSTEIN and Senator SPECTER were able to ask questions before his departure. I regret that the Attorney General did not have the time to respond to questions from all the Members of the Committee either on September 25 or at any time since. He promised to answer the written questions Members submitted about the legislation promptly, but we did not receive any answers before passage of S. 1510, H.R. 2975, or H.R. 3162. I will make those answers a part of the hearing record whenever they are received even after final passage of the legislation.

The Chairman of the Constitution Subcommittee, Senator FEINGOLD, also held an important hearing on October 3 on the civil liberties ramifications of the expanded surveillance powers requested by the Administration. I thank him for his assistance in illuminating these critical issues for the Senate.

To accede to the Administration's request for prompt consideration of the USA Act, the Leaders decided to hold the bill at the desk rather than refer it to the Committee for markup, as is regular practice. Senator HATCH specifically urged that this occur. Indeed, when the Senate considered the anti-terrorism act in 1995 after the Oklahoma City bombing, we bypassed the Committee in order to deal with the legislation more promptly on the floor.

After Senate consideration and passage on the one-month anniversary of the terrorist attack, the House Republican leadership decided to proceed with a version of the Senate-passed bill rather than the bill reported by the House Judiciary Committee. H.R. 2975 passed the House with opposition on October 12. Unfortunately, the House did not take the traditional step of requesting a conference to reconcile the bills. In an apparent effort by the Administration and House Republican leadership to try to pressure the Senate to accept that version of the bill, without strong money laundering or biological weapons provisions and with a 5-year sunset, the House failed to take the procedural steps necessary to convene a conference. Had a conference been requested and begun, a final bill would have been passed last week. Instead, without a structure or process, discussions were less concentrated and it was only after a leadership meeting late last week that the major outline of the measure was agreed upon.

During the negotiations over the past two weeks, the Administration sought to eliminate the sunset altogether, but that effort failed. The House insisted that the amendments to the so called "McDade law" be dropped, and the Administration acquiesced. Eventually, the House accepted the Senate's position on the need to include both money laundering and biological weapons provisions. Even then, the House Republican leadership reneged on the agreement to proceed by way of a traditional House-Senate conference. Instead, they opted to proceed by a new bill passed by the House in short order and sent to the Senate as an amendable measure. That brings us to today.

Given the expedited process that has been used to move this legislation through the House and now to the Senate, I will take more time than usual to detail its provisions.

This bill has raised serious and legitimate concerns about the expansion of authorities for government surveillance and intelligence gathering within this country. Indeed, this bill will change surveillance and intelligence procedures for all types of criminal and foreign intelligence investigations, not just for terrorism cases. Significantly, the sunset provision included in the final bill calls for vigilant legislative oversight, so that the Congress will know how these legal authorities are

used and whether they are abused over the next four years.

We should be clear at the outset that while the sunset applies to the expanded surveillance authorities under FISA, it does not apply to other controversial provisions in the bill. As originally passed by the House, the sunset did not apply to the provisions on sharing grand jury information with intelligence agencies, in section 203(a), and the so-called "sneak and peak" authority for surreptitious search and seizure, in section 213. The final bill, H.R. 3162, removes two more provisions from the sunset—the expanded scope of subpoenas for records of electronic communications, in section 210, and the new authority for pen registers and trap and trace devices in criminal investigations, in section 216.

Congressional oversight is especially necessary to monitor the implementation of these new authorities. I agree with Leader ARTHEY that the sunset will help ensure that law enforcement is responsive to congressional oversight and inquiries on use of these new authorities and that a full record is developed on their efficacy and necessity. The Senate Judiciary Committee has the challenging duty to establish and maintain an oversight regime that allows the Congress to know how these powers are exercised.

This bill will authorize the expanded sharing with intelligence agencies of information collected as part of a criminal investigation, and the expanded use of foreign intelligence surveillance tools and information in criminal investigations. Where foreign-sponsored terrorism is the target of an investigation, criminal and foreign intelligence jurisdictions clearly overlap and agencies must coordinate their efforts accordingly. This bill enters new and uncharted territory by breaking down traditional barriers between law enforcement and foreign intelligence. This is not done just to combat international terrorism, but for any criminal investigation that overlaps a broad definition of "foreign intelligence."

Yet, before final passage of this bill, the Senate should recall our nation's unfortunate experience with domestic surveillance and intelligence abuses that came to light in the mid-1970s. Until Watergate and the Vietnam war, Congress allowed the Executive branch virtually a free hand in using the FBI, the CIA, and other intelligence agencies to conduct domestic surveillance in the name of national security. It was the Cold War. Members of Congress were reluctant to take on FBI Director J. Edgar Hoover, and oversight was non-existent. One of the few safeguards enacted into law drew a sharp line between foreign intelligence and law enforcement. The National Security Act of 1947, which established the Central Intelligence Agency, said—and still says today—that the CIA "shall have no police, subpoena, or law enforcement powers or internal security functions."

The provisions on the disclosure of "foreign intelligence" from Federal criminal investigations make fundamental changes in the rules for the handling of highly sensitive personal, political and business information acquired for law enforcement purposes. Such information may now be disclosed to intelligence, defense, and national security agencies. The law is changed not only to permit the wider sharing of information from grand juries, domestic law enforcement wiretaps, and criminal investigations generally (in section 203), but also to require Federal law enforcement agencies to share this information with intelligence agencies through the Director of Central Intelligence, unless the Attorney General makes exceptions (in section 905).

There would be far less controversy if these provisions were limited to information about domestic or international terrorism or espionage. Instead, they potentially authorize the disclosure throughout intelligence, military, and national security organizations of a far broader range information about United States persons, including citizens, permanent resident aliens, domestic political groups, and companies incorporated in the United States. The information may be shared if it fits the broad definitions of "foreign intelligence" and "foreign intelligence information."

The term "foreign intelligence" is defined to mean "information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities." The term "foreign intelligence information" is defined to include information about a United States person that concerns a foreign power or foreign territory and "that relates to the national defense or the security of the United States" or "the conduct of the foreign affairs of the United States." Therefore, potentially, whenever a criminal investigation acquires information about an American citizen's relationship with a foreign country or its government, that information is eligible to be disseminated widely as "foreign intelligence information"—even if the information is about entirely lawful activities, business transactions, political relationships, or personal opinions.

Criminal investigations acquire voluminous information about persons who are not involved in illegal activity. Many individuals are investigated and later cleared. Many cases are investigated and never prosecuted. Many witnesses are interviewed whose testimony never surfaces at trial. Immunity is granted to compel testimony before grand juries about people who are never indicted. Wiretaps and microphone "bugs" and computer communications intercepts pick up extensive information about activities and opinions and personal lives that have no relevance to the criminal activity that they are authorized to detect or monitor. Where regulatory or tax laws carry criminal penalties, investigators probe the confidential financial details of business transactions and records. Federal criminal investigators have enormous discretion, with little statutory or constitutional guidance for how they interview people, conduct physical surveillance, recruit informants in organizations, and request access to records they consider "relevant" to an investigation. All that information would be eligible to be disseminated widely within the government, beyond the purposes of the criminal investigation, if it meets the definition of "foreign intelligence" or "foreign intelligence information."

The risks of misusing this information were documented 25 years ago, when the Congress made public the record of Cold War abuses of investigative powers by Federal agencies acting in the name of national security. The Senate created a Select Committee To Study Governmental Affairs With Respect to Intelligence Communities, chaired by Senator Frank Church, to conduct a year-long investigation with extensive public hearings and detailed reports on the investigations of lawful political dissent and protest. The Church Committee found that the FBI's internal security and domestic intelligence programs compiled massive files on activities protected by the First Amendment and the political opinions of Americans.

During the height of antiwar protest and urban unrest in the late 1960's, Army intelligence joined the FBI in monitoring domestic political activity. National intelligence agencies such as CIA and NSA received extensive reporting from the FBI and the military, as well as from their own intelligence gathering on critics of government policy. Other law enforcement agencies such as the Internal Revenue Service were used to selectively investigate organizations based on their political views. Under President's of both parties, these agencies disseminated information to the White House about the lawful political activities and opinions of critics of Administration policy—all under the rubric of protecting the national security. The scope of intelligence gathering swept up environmental groups, women's liberation activists, and virtually any organization that mounted peaceful protest demonstrations.

During this unfortunate period in our history, the government did more than just gather information about protest and dissent. The FBI developed a systematic program to disrupt domestic groups and discredit their leaders, known as "COINTELPRO." The FBI's efforts included the selective sharing of information from its investigations to deny people employment and smear their reputations. Beginning with Communist and socialist groups, the FBI's COINTELPRO operations spread in the 1960s to the Klan, the "new left," and black militants. Elements of the civil

rights and antiwar movements were targeted for disruption because of suspicion that they were "influenced" by communists; others because of their strident rhetoric. When some targets were suspected of engaging in violence, the FBI's tactics went so far as to place lives in jeopardy by passing false allegations that individuals were government informants.

The most notorious case was J. Edgar Hoover's vendetta against Dr. Martin Luther King, Jr. The Church Committee documented the FBI's effort to discredit Dr. King by disclosing confidential information that was obtained from wiretaps and microphones targeted against him. The wiretaps were justified to the Kennedy and Johnson Administrations on the grounds that some of Dr. King's advisors were Communists, but this excuse allowed the FBI to mount continuous political surveillance to undermine Dr. King's effectiveness. The FBI disseminated allegedly derogatory information not only within the government, but to media and other private organizations including efforts to deny Dr. King the Nobel Peace Prize. Most vicious of all was the FBI's preparation of a composite tape recording that was sent to him anonymously with an apparent invitation to commit suicide. During the 1964 Democratic National Convention in Atlantic City where the greatest controversy involved seating the Mississippi Freedom Democratic Party delegates, the FBI provided the Johnson White House a continuous flow of political intelligence from the wiretaps on Dr. King's telephones in Atlantic City.

These methods of domestic political surveillance and covert manipulation and disruption have no place in a free society. They are lawful for the CIA to use against terrorists abroad, under Presidential authorization and oversight by the Intelligence Committees. In the United States, however, such surveillance activities by our government offends our fundamental First Amendment rights of speech and association, and undermines our democratic values. Since the Church Committee investigation, one of the main reasons for maintaining barriers between domestic criminal investigations and foreign intelligence operations has been a concern that the no-hold-barred methods used abroad must not be brought back into this country.

The Church Committee recommended a series of safeguards to restrict the collection of information about Americans by the CIA, the National Security Agency, and other U.S. intelligence agencies. The Attorney General issued guidelines for FBI investigations and Presidents issued Executive Orders requiring procedures approved by the Attorney General for the collection and retention of information about Americans by U.S. intelligence agencies. These guidelines and procedures have served for the past 25 years as a stable framework that, with rare exceptions, has not allowed previous abuses to recur.

The most significant legislative result of the Church Committee investigation was the Foreign Intelligence Surveillance Act of 1978 which required court orders for national security electronic surveillance in the United States. No longer did the Executive branch have exclusive control over the vast powers of U.S. intelligence to conduct wiretapping, bugging, and other communications monitoring in this country. Surveillance was limited to foreign powers and agents of foreign powers, and the statutory probable cause standard for targeting an American as an "agent of a foreign power" required a showing of clandestine intelligence activities, sabotage, or international terrorist activities on behalf of a foreign power. Americans could not be targeted solely on the basis of activities protected by the First Amendment. Surveillance of Americans under FISA was limited to counterintelligence purposes to defend the nation against foreign spying and terrorism. Americans could not be considered "agents of a foreign power" on the basis of their lawful business or political relationships with foreign governments or organizations.

The Congress has been cautious in the decades following the revelations of the Church Committee about allowing use of criminal justice information for other purposes and, specifically, on sharing such information with intelligence agencies. In 1979 Attorney General Benjamin Civiletti testified before the House Judiciary Subcommittee on Constitutional Rights that the guidelines for "any dissemination outside the Bureau . . . will have to be very, very specific. We will have to be very certain the dissemination is lawful, meets the same standards of certainty, of intent, which is the basic reason for the collection of the information and the investigation. . . ." On the issue of FBI sharing with the CIA, Attorney General Civiletti said "you have to be extremely careful in working out, pursuant to the law, the information which is being exchanged, what its purpose is, how it was obtained and collected, so that you are not inadvertently, out of a sense of cooperation or efficiency, perverting or corrupting the fact that the CIA's main duty is foreign intelligence, and they have no charter, no responsibility, and not duty performance, no mission to investigate criminal acts in the United States."

The bill we are passing today makes potentially sweeping changes in the relationships between the law enforcement and intelligence agencies. In the current crisis, there is justification for expanding authority specifically for counterintelligence to detect and prevent international terrorism. I support the FBI request for broader authority under FISA for pen registers and access to records without having to meet the statutory "agent of a foreign power" standard, because the Fourth Amendment does not normally apply to such techniques and the FBI has comparable authority in its criminal investigations. However, I have insisted that this authority to investigate U.S. persons be limited to counterintelligence investigations conducted to protect against international terrorism and spying activities and that such investigations may not be based solely on activities protected by the First Amendment. None of the changes in FISA would authorize investigations of Americans for the broader, more ambiguous purpose of collecting "foreign intelligence" generally. In that respect, the bill adheres to the basic principles recommended by the Church Committee.

The gravest departure from that framework, and the one with most potential for abuse, is the new and unprecedented statutory authority for sharing of "foreign intelligence" from criminal investigations with "any other Federal law enforcement, intelligence, protective, immigration, national defense, or national security official." The Church Committee warned of the political abuse of the dissemination of intelligence from domestic investigations. Intelligence was disseminated to the White House to track the contacts of members of Congress with particular foreign embassies. Information was volunteered to the White House about Administration critics and other political figures. The Church Committee found "excessive dissemination of large amounts of relatively useless or totally irrelevant information," to the White House that was not evaluated and "thus exaggerated the dangers."

The Church Committee recommended permitting FBI dissemination of personally identifiable information about Americans to intelligence, military and other national security agencies in two areas—"preventive criminal investigations of terrorist activities" and "preventive intelligence investigations of hostile foreign intelligence activities." This has been substantially the practice under the Attorney General's guidelines and Executive order procedures since then.

The new authority to disseminate "foreign intelligence" from criminal investigations, including grand juries and law enforcement wiretaps, is an invitation to abuse without special safeguards. Fortunately, the final bill includes a provision, which was not in the Administration's original proposal, to maintain some degree of judicial oversight of the dissemination of grand jury information. Within a "reasonable time" after the disclosure of grand jury information, a government attorney "shall file under seal a notice with the court stating the fact that such information was disclosed and the departments, agencies, or entities to which the disclosure was made." No such judicial role is provided for the disclosure of information from wiretaps and

other criminal investigative techniques including the infiltration of organizations with informants. However, that authority to disclose without judicial review is subject to the sunset in four years.

Other safeguards can, if used properly, minimize the unnecessary disclosure of "foreign intelligence" that identifies an American. When the information comes from grand juries or wiretaps, the Attorney General is required under the bill to establish procedures for the disclosure of information that identifies a United States person. The Senate Judiciary Committee will want to take a very close look at these procedures. Although not required under the bill, such procedures would also be desirable for disclosure of information from criminal investigations generally, as permitted under section 203(d). In section 905, where the bill requires disclosure to intelligence agencies from criminal investigations, the Attorney General is authorized to make exceptions and must issue implementing procedures. Again, these procedures will be closely examined by the Senate Judiciary Committee.

These procedures will be critical in determining the scope and impact of these provisions. Will they focus the sharing of information on international terrorism, which is the immediate and compelling need before us, or will they sweep more broadly? Will they permit automatic dissemination to intelligence agencies of any information about foreign governments, foreign organizations, or foreign persons that is obtained in FBI investigations of international organized crime and white collar crime? What are the specific circumstances under which confidential information collected by particular agencies, such as the Internal Revenue Service or the Bureau of Alcohol, Tobacco and Firearms, will be disseminated to the U.S. Military or other agencies? What will be the guidelines for including information that identifies United States persons? How will need-to-know decisions be made on the handling of this information, and how will access be controlled? What will be done to ensure compliance with the 1947 ban on CIA having "police, subpoena, or law enforcement powers or internal security functions?"

These and many other questions must be the subject of the Judiciary Committee's oversight of the implementation of the surveillance and intelligence provisions of this bill. Our government is entering uncharted territory. Much of the government's experience from the Cold War era before the mid-1970s warns us of the risks of abuse. Reasonable measures that we are taking to protect against international terrorism may have far-reaching ramifications beyond the immediate crisis. There has never been a greater need for Congressional vigilance to ensure against unnecessary and improper use of the wide discretion being granted by a new law. I intend to ask the Attorney General and the Director of Central Intelligence to advise the Judiciary Committee of their implementation plans and practices every step of the way.

The final bill includes a long overdue remedy for unauthorized disclosure of information obtained from electronic surveillance under FISA and under criminal procedures. If the government monitors the conversations of a person under the electronic surveillance procedures of title 18 or FISA and that information is disclosed without proper authority, the aggrieved person may recover money damages from the Federal Government. Such improper disclosure is what happened in the past when the FBI passed information from the electronic surveillance of Dr. Martin Luther King to selected private individuals and organizations in an effort to discredit Dr. King. The government itself would be liable, in addition to individual employees, if something like this ever happens again.

This provision is especially valuable in this bill, because of the expanded sharing of information from electronic surveillance in criminal cases to agencies with intelligence, military, and other national security responsibilities. When this kind of sensitive information is disseminated more widely, the risk increases that it will be leaked.

As a deterrent against malicious leaks, this provision wisely includes procedures for administrative discipline as well as the civil remedy against the Government. When a court or the appropriate agency determines that there is serious question about whether or not an employee willfully disclosed information without proper authority, disciplinary proceedings must be initiated. If the agency head decides that discipline is not warranted, he or she must notify the Inspector General with jurisdiction over the agency and provide the reasons for the decision not to impose discipline.

Representative BARNY FRANK deserves credit for developing this proposal, and the Department of Justice has worked with Representative FRANK to ensure that the procedures for civil discovery take into account the needs for protecting related criminal investigations or prosecutions and classified operations under the Foreign Intelligence Surveillance Act.

When Congress authorized electronic surveillance in 1968 under title 18 and in 1978 under FISA, the legislation imposed civil and criminal sanctions for violations by individuals. This bill takes the law two steps forward by adding government liability and administrative discipline against government employees. Along with the sunset provision, judicial oversight of the sharing of grand jury information, and other improvements, the Frank amendment reflects the valuable contribution of the House of Representatives towards making this a balanced bill.

The heart of every American aches for those who died or have been injured because of the tragic terrorist attacks in New York, Virginia, and Pennsylvania on September 11. Even now, we cannot assess the full measure of this attack in terms of human lives, but we know that the number of casualties is extraordinarily high.

Congress acted swiftly to help the victims of September 11. Within 10 days, we passed legislation to establish a Victims Compensations Program, which will provide fair compensation to those most affected by this national tragedy. I am proud of our work on that legislation, which will expedite payments to thousands of Americans whose lives were so suddenly shattered.

But now more than ever, we should remember the tens of thousands of Americans whose needs are not being met—the victims of crimes that have not made the national headlines. Just one day before the events that have so transformed our nation, I came before this body to express my concern that we were not doing more for crime victims. I noted that the pace of victims legislation had slowed, and that many opportunities for progress had been squandered. I suggested that this year, we had a golden opportunity to make significant progress in this area by passing S. 783, the Leahy-Kennedy Crime Victims Assistance Act of 2001.

I am pleased, therefore, that the antiterrorism package now before the Senate contains substantial portions of S. 783 aimed at refining the Victims of Crime Act of 1981 (VOCA), and improving the manner in which the Crime Victims Fund is managed and preserved. Most significantly, section 621 of the USA Act will eliminate the cap on VOCA spending, which has prevented more than $700 million in Fund deposits from reaching victims and supporting essential services.

Congress has capped spending from the Fund for the last two fiscal years, and President Bush has proposed a third cap for fiscal year 2002. These limits on VOCA spending have created a growing sense of confusion and unease by many of those concerned about the future of the Fund.

We should not be imposing artificial caps on VOCA spending while substantial unmet needs continue to exist. Section 621 of the USA Act replaces the cap with a self-regulating system that will ensure stability and protection of Fund assets, while allowing more money to be distributed to the States for victim compensation and assistance.

Other provisions included from S. 783 will also make an immediate difference in the lives of victims, including victims of terrorism. Shortly after the Oklahoma City bombing, I proposed and the Congress adopted the Victims of Terrorism Act of 1995. This legislation authorized the Office for Victims of Crime (OVC) to set aside an emergency reserve of up to $50 million as part of the Crime Victims Fund. The emergency reserve was intended to serve as a "rainy day" fund to supplement compensation and assistance

grants to States to provide emergency relief in the wake of an act of terrorism or mass violence that might otherwise overwhelm the resources of a State's crime victim compensation program and crime victim assistance services. Last month's disaster created vast needs that have all but depleted the reserve. Section 621 of the USA Act authorizes OVC to replenish the reserve with up to $50 million, and streamlines the mechanism for replenishment in future years.

Another critical provision of the USA Act will enable OVC to provide more immediate and effective assistance to victims of terrorism and mass violence occurring within the United States. I proposed this measure last year as an amendment to the Justice for Victims of Terrorism Act, but was compelled to drop it to achieve bipartisan consensus. I am pleased that we are finally getting it done this year.

These and other VOCA reforms in the USA Act are long overdue. Yet, I regret that we are not doing more. In my view, we should pass the Crime Victims Assistance Act in its entirety. In addition to the provisions that are included in today's bill, this legislation provides for comprehensive reform of Federal law to establish enhanced rights and protections for victims of Federal crime. It also proposes several programs to help States provide better assistance for victims of State crimes.

I also regret that we have not done more for other victims of recent terrorist attacks. While all Americans are numbed by the heinous acts of September 11, we should not forget the victims of the 1998 embassy bombings in East Africa. Eleven Americans and many Kenyan and Tanzanian nationals employed by the United States lost their lives in that tragic incident. It is my understanding that compensation to the families of these victims has in many instances fallen short. It is my hope that OVC will use a portion of the newly replenished reserve fund to remedy any inequity in the way that these individuals have been treated.

We cannot speak of the victims of the September 11 without also noting that Arab-Americans and Muslims in this country have become the targets of hate crimes, harassment, and intimidation. I applaud the President for speaking out against and condemning such acts, and for visiting a mosque to demonstrate by action that all religions are embraced in this country. I also commend the FBI Director for his periodic reports on the number of hate crime incidents against Arab-American and Muslims that the FBI is aggressively investigating and making clear that this conduct is taken seriously and will be punished.

The USA Act contains, in section 102, a sense of the Congress that crimes and discrimination against Arab and Muslim Americans are condemned, and in section 1002, a provision suggested by Senator DURBIN that condemns violence and discrimination against Sikh Americans. Many of us would like to do more, and finally enact effective hate crimes legislation, but the Administration has asked that the debate on that legislation be postponed. One of my greatest regrets regarding the negotiations in this bill was that objections prevented the Local Law Enforcement Enhancement Act, S. 625, from being included in the USA Act.

The Administration's initial proposal was entirely focused on Federal law enforcement. Yet, we must remember that State and local law enforcement officers have critical roles to play in preventing and investigating terrorist acts. I am pleased that the bill we consider today recognizes this fact.

As a former State prosecutor, I know that State and local law enforcement officers are often the first responders to a crime. On September 11, the nation saw that the first on the scene were the heroic firefighters, police officers and emergency personnel in New York City. These New York public safety officers, many of whom gave the ultimate sacrifice, remind us of how important it is to support our State and local law enforcement partners. The USA Act provides three critical measures of Federal support for our State and local law enforcement officers in the war against terrorism.

We streamline and expedite the Public Safety Officers' Benefits application process for family members of fire fighters, police officers and rescue workers who perish or suffer a disabling injury in connection with prevention, investigation, rescue or recovery efforts related to a future terrorist attack.

The Public Safety Officers' Benefits Program provides benefits for each of the families of law enforcement officers, firefighters, and emergency response crew members who are killed or disabled in the line of duty. Current regulations, however, require the families of public safety officers who have fallen in the line of duty to go through a cumbersome and time-consuming application process. In the face of our national fight against terrorism, it is important that we provide a quick process to support the families of brave Americans who selflessly give their lives so that others might live before, during, and after a terrorist attack.

This provision builds on the new law championed by Senator CLINTON, Senator SCHUMER and Congressman NADLER to speed the benefit payment process for families of public safety officers killed in the line of duty in New York City, Virginia, and Western Pennsylvania, on September 11.

We have raised the total amount of Public Safety Officers' Benefit Program payments from approximately $150,000 to $250,000. This provision retroactively goes into effect to provide much-needed relief for the families of the brave men and women who sacrificed their own lives for their fellow Americans during the year. Although this increase in benefits can never replace a family's tragic loss, it is the right thing to do for the families of our fallen heroes. I want to thank Senator BIDEN and Senator HATCH for their bipartisan leadership on this provision.

We expand the Department of Justice Regional Information Sharing Systems Program to promote information sharing among Federal, State and local law enforcement agencies to investigate and prosecute terrorist conspiracies and activities and authorize a doubling of funding for this year and next year. The RISS Secure Intranet is a nationwide law enforcement network that already allows secure communications among the more than 5,700 Federal, State and local law enforcement agencies. Effective communication is key to effective law enforcement efforts and will be essential in our national fight against terrorism.

The RISS program enables its member agencies to send secure, encrypted communications—whether within just one agency or from one agency to another. Federal agencies, such as the FBI, do not have this capability, but recognize the need for it. Indeed, on September 11, immediately after the terrorist attacks, FBI Headquarters called RISS officials to request "Smartgate" cards and readers to secure their communications systems. The FBI agency in Philadelphia called soon after to request more Smartgate cards and readers as well.

The Regional Information Sharing Systems Program is a proven success that we need to expand to improve secure information sharing among Federal, State and local law enforcement agencies to coordinate their counter-terrorism efforts.

During negotiations following initial passage of the Senate and House bills, we added two new provisions to support State and local governments in the final legislation. At Senator BIDEN's request, the First Responders Assistance Act, was added as section 1005 of H.R. 3062. This provision authorizes a $25 million Department of Justice program to authorize grants to State and local authorities to respond to and prevent acts of terrorism.

I authored section 1014 of H.R. 3062 to authorize a Department of Justice grant program for State and local domestic preparedness support. These grants will help each State prepare for and respond to terrorist acts including but not limited to events of terrorism involving weapons of mass destruction and biological, nuclear, radiological, incendiary, chemical, and explosive devices. This provision improves an appropriated program to provide: 1, additional flexibility to purchase needed equipment; 2, training and technical assistance to State and local first responders; and 3, a more equitable allocation of funds to all States.

Our State and local law enforcement partners welcome the challenge to join in our national mission to combat terrorism. We cannot ask State and local

law enforcement officers to assume these new national responsibilities without also providing new Federal support. This bill provides five key provisions for necessary Federal support for our State and local law enforcement officers to serve as full partners in our fight against terrorism.

I am deeply troubled by continuing reports that critical information is not being shared with State and local law enforcement. In particular, the recent testimony of Baltimore Police Chief Ed Norris before the House Government Reform Committee highlighted the current problem. I have also spoken to Mayor Giuliani and to Senator SCHUMER and Senator CLINTON about the need for better coordination and information sharing between the FBI and State and local law enforcement authorities who are being called upon to assist in the current terrorism investigations. This is no time for turf battles. The FBI must recognize the contributions of other law enforcement authorities and facilitate their continued cooperation in this national effort.

The unfolding facts about how the terrorists who committed the September 11 attack were able to enter this country without difficulty are chilling. Since the attacks many have pointed to our northern border as vulnerable to the entry of future terrorists. This is not surprising when a simple review of the numbers shows that the northern border has been routinely short-changed in personnel. While the number of border patrol agents along the southern border has increased over the last few years to over 8,000, the number at the northern border has remained the same as a decade ago at 300. This remains true despite the fact that Admad Ressam, the Algerian who planned to blow up the Los Angeles International Airport in 1999, and who has been linked to those involved in the September 11 attacks, chose to enter the United States at our northern border. That border will remain an inviting target until we dramatically improve our security.

The USA Act includes my proposals to provide the substantial and long overdue assistance for our law enforcement and border control efforts along the Northern Border. My home State of Vermont has seen huge increases in Customs and INS activity since the signing of the North American Free Trade Agreement. The number of people coming through our borders has risen steeply over the years, but our staff and our resources have not.

I proposed—and this legislation authorizes in section 402—tripling the number of Border Patrol, INS inspectors, and Customs Service employees in each of the States along the 4,000-mile Northern Border. I was gratified when 22 Senators—Democrats and Republicans—wrote to the President supporting such an increase, and now hope that the Administration will fully fund this critical law enforcement improvement.

Senators CANTWELL and SCHUMER in the Committee and Senators MURRAY and DORGAN have been especially strong advocates of these provisions and I thank them for their leadership. In addition, the USA Act, in section 401, authorizes the Attorney General to waive the FTE cap on INS personnel in order to address the national security needs of the United States on the northern border. Now more than ever, we must patrol our border vigilantly and prevent those who wish America harm from gaining entry. At the same time, we must work with the Canadians to allow speedy crossing to legitimate visitors and foster the continued growth of trade which is beneficial to both countries.

In addition to providing for more personnel, this bill also includes, in section 402(4), my proposal to provide $100 million in funding for both the INS and the Customs Service to improve the technology used to monitor the Northern Border and to purchase additional equipment. The bill also includes, in section 403(c), an important provision from Senator CANTWELL directing the Attorney General, in consultation with other agencies, to develop a technical standard for identifying electronically the identity of persons applying for visas or seeking to enter the United States. In short, this bill provides a comprehensive high-tech boost for the security of our nation.

This bill also includes important proposals to enhance data sharing. The bill, in section 403, directs the Attorney General and the FBI Director to give the State Department and INS access to the criminal history information in the FBI's National Crime Information Center (NCIC) database, as the Administration and I both proposed. The Attorney General is directed to report back to the Congress in two years on progress in implementing this requirement. We have also adopted the Administration's language, in section 413, to make it easier for the State Department to share information with foreign governments for aid in terrorist investigations.

The USA Act contains a number of provisions intended to improve and update the Federal criminal code to address better the nature of terrorist activity and assist the FBI in translating foreign language information collected. I will mention just a few of these provisions.

The truth certainly seems self-evident that all the best surveillance techniques in the world will not help this country defend itself from terrorist attack if the information cannot be understood in a timely fashion. Indeed, within days of September 11, the FBI Director issued an employment ad on national TV calling upon Arabic speakers to apply for a job as an FBI translator. This is a dire situation that needs attention. I am therefore gratified that the final bill contains my proposal, in section 205, to waive any Federal personnel requirements and limitations imposed by any other law in order to expedite the hiring of translators at the FBI.

This bill also directs the FBI Director to establish such security requirements as are necessary for the personnel employed as translators. We know the effort to recruit translators has a high priority, and the Congress should provide all possible support. Therefore, the bill calls on the Attorney General to report to the Judiciary Committees on the number of translators employed by the Justice Department; any legal or practical impediments to using translators employed by other Federal, State, or local agencies, on a full, part-time, or shared basis; and the needs of the FBI for specific translation services in certain languages, and recommendations for meeting those needs.

The Administration's initial proposal assembled a laundry list of more than 40 Federal crimes ranging from computer hacking to malicious mischief to the use of weapons of mass destruction, and designated them as "Federal terrorism offenses," regardless of the circumstances under which they were committed. For example, a teenager who spammed the NASA website and, as a result, recklessly caused damage, would be deemed to have committed this new "terrorism" offense. Under the Administration's proposal, the consequences of this designation were severe. Crimes on the list would carry no statute of limitations. The maximum penalties would shoot up to life imprisonment, and those released earlier would be subject to a lifetime of supervised release. Moreover, anyone who harbored a person whom he had "reasonable grounds to suspect" had committed, or was about to commit, a "Federal terrorism offense"—whether it was the Taliban or the mother of my hypothetical teenage computer hacker—would be subject to stiff criminal penalties. I worked closely with the Administration to ensure that the definition of "terrorism" in the USA Act fit the crime.

First, we have trimmed the list of crimes that may be considered as terrorism predicates in section 808 of the bill. This shorter, more focused list, to be codified at 18 U.S.C. §2332(g)(5)(B), more closely reflects the sorts of offenses committed by terrorists.

Second, we have provided, in section 809, that the current 8-year limitations period for this new set of offenses will remain in place, except where the commission of the offense resulted in, or created a risk of, death or serious bodily injury.

Third, rather than make an across-the-board, one-size-fits-all increase of the penalties for every offense on the list, without regard to the severity of the offense, we have made, in section 810, more measured increases in maximum penalties where appropriate, including life imprisonment or lifetime supervised release in cases in which the offense resulted in death. We have also added, in section 811, conspiracy provisions to a few criminal statutes where appropriate, with penalties equal to the penalties for the object offense, up to life imprisonment.

Finally, we have more carefully defined the new crime of harboring terrorists in section 803, so that it applies only to those harboring people who have committed, or are about to commit, the most serious of Federal terrorism-related crimes, such as the use of weapons of mass destruction. Moreover, it is not enough that the defendant had "reasonable grounds to suspect" that the person he was harboring had committed, or was about to commit, such a crime; the government must prove that the defendant knew or had "reasonable grounds to believe" that this was so.

I am deeply disappointed that the amendments to the so-called McDade law, which were included in the original USA Act, S. 1510, which passed the Senate, are not included in the bill before the Senate today. Well before September 11, the Justice Department has said that the McDade law—which subjects Federal prosecutors to multiple and potentially conflicting State bar rules—has delayed important criminal investigations, prevented the use of effective and traditionally-accepted investigative techniques, and served as the basis of litigation to interfere with legitimate Federal prosecutions. Despite this record of opposition, and the increasing demands upon Federal prosecutors in the wake of the terrorist attacks, the Administration simply acceded to House demands to remove this provision of the USA Act. This abandonment has removed a critical law enforcement provision from the bill. No one in the Senate knows more about the importance of this provision than Senator WYDEN, who worked strenuously to include the McDade law in this bill. But his efforts and mine proved unavailing without Administration backing through the entire process.

The McDade law has a dubious history, to say the least. At the end of the 105th Congress, it was slipped into an omnibus appropriations bill over the objection of every member of the Senate Judiciary Committee. Since it was adopted, it has caused numerous problems for Federal prosecutors, and we must find a way to amend it before more cases are compromised. At a time when we need Federal law enforcement authorities to move quickly to catch those responsible for the September 11 attacks, and to prevent further attacks on our country, we can no longer tolerate the drag on Federal investigations and prosecutions caused by this ill-considered legislation.

Another provision of the USA Act that was not included in the Administration's initial proposal is section 801, which targets acts of terrorism and other violence against mass transportation systems. Earlier this month, a Greyhound bus crashed in Tennessee after a deranged passenger slit the driver's throat and then grabbed the steering wheel, forcing the bus into oncoming traffic. Six people were killed in the crash. Because there are currently no Federal laws addressing terrorism of mass transportation systems, however, there may be no Federal jurisdiction over such a case, even if it were committed by suspected terrorists. Clearly, there is an urgent need for strong criminal legislation to deter attacks against mass transportation systems. Section 801 will fill this gap.

The Computer Fraud and Abuse Act, 18 U.S.C. § 1030, is the primary Federal criminal statute prohibiting computer frauds and hacking. I worked with Senator HATCH in the last Congress to make improvements to this law in the Internet Security Act, which passed the Senate as part of another bill. Our work is included in section 814 of the USA Act. This section would amend the statute to clarify the appropriate scope of Federal jurisdiction. (1) The bill adds a definition of "loss" to cover any reasonable cost to the victim in responding to a computer hacker. Calculation of loss is important both in determining whether the $5,000 jurisdictional hurdle in the statute is met, and, at sentencing, in calculating the appropriate guideline range and restitution amount.

(2) The bill amends the definition of "protected computer," to include qualified computers even when they are physically located outside of the United States. This clarification will preserve the ability of the United States to assist in international hacking cases and finally, this section eliminates the current directive to the Sentencing Commission requiring that all violations, including misdemeanor violations, of certain provisions of the Computer Fraud and Abuse Act be punished with a term of imprisonment of at least six months.

Borrowing from a bill introduced in the last Congress by Senator BIDEN, the USA Act contains a provision in section 817 to strengthen our Federal laws relating to the threat of biological weapons. At a time when the national headlines are filled with news about anthrax and other biological threats, it is fitting that the House added this provision back to the bill after dropping it from H.R. 2975. Unfortunately, the bill does not contain certain regulatory provisions that the Administration initially proposed and later withdrew, apparently due to its inability to resolve inter-agency conflicts. Given the grave importance of this issue, I urge the Administration to resolve these disputes and work with the Congress to provide these additional protections.

Current law prohibits the possession, development, or acquisition of biological agents or toxins "for use as a weapon." Section 817 amends the definition of "for use as a weapon" to include all situations in which it can be proven that the defendant had any purpose other than a peaceful purpose. This will enhance the government's ability to prosecute suspected terrorists in possession of biological agents or toxins, and conform the scope of the criminal offense in 18 U.S.C. § 175 more closely to the related forfeiture provision in 18 U.S.C. § 176. This section also contains a new statute, 18 U.S.C. § 175b, which generally makes it an offense for certain restricted persons, including non-resident aliens from countries that support international terrorism, to possess a listed biological agent or toxin.

Of greater consequence, section 817 defines another additional offense, punishable by up to 10 years in prison, of possessing a biological agent, toxin, or delivery system "of a type or in a quantity that, under the circumstances," is not reasonably justified by a peaceful purpose. As originally proposed by the Administration, this provision specifically stated that knowledge of whether the type or quantity of the agent or toxin was reasonably justified was not an element of the offense. Thus, although the burden of proof is always on the government, every person who possesses a biological agent, toxin, or delivery system was at some level of risk. At my urging, the Administration agreed to drop this portion of the provision.

Nevertheless, I remain troubled by the subjectivity of the substantive standard for violation of this new criminal prohibition, and question whether it provides sufficient notice under the Constitution. I also share the concerns of the American Society for Microbiology and the Association of American Universities that this provision will have a chilling effect upon legitimate scientific inquiry that offsets any benefit in protecting against terrorism. While we have tried to prevent against this by creating an explicit exclusion for "bona fide research," this provision may yet prove unworkable, unconstitutional, or both. I urge the Justice Department and the research community to work together on substitute language that would provide prosecutors with a more workable tool.

Two sections of the USA Act were added at the request of the United States Secret Service, with the support of the Administration. I was pleased to accommodate the Secret Service by including these provisions in the bill to expand Electronic Crimes Task Forces and to clarify the authority of the Secret Service to investigate computer crimes.

The Secret Service is committed to the development of new tools to combat the growing areas of financial crime, computer fraud, and cyberterrorism. Recognizing a need for law enforcement, private industry and academia to pool their resources, skills, and vision to combat criminal elements in cyberspace, the Secret Service created the New York Electronic Crimes Task Force (NYECTF). This highly successful model includes

over 250 individual members, including 50 different Federal, State and local law enforcement agencies, 100 private companies, and 9 universities. Since its inception in 1995, the NYECTF has successfully investigated a range of financial and electronic crimes, including credit card fraud, identity theft, bank fraud, computer systems intrusions, and e-mail threats against protectees of the Secret Service. Section 105 of the USA Act authorizes the Secret Service to develop similar task forces in cities and regions across the country where critical infrastructure may be vulnerable to attacks from terrorists or other cyber-criminals.

Section 506 of the USA Act gives the Secret Service concurrent jurisdiction to investigate offenses under 18 U.S.C. § 1030 relating to fraud and related activity in connection with computers. Prior to the 1996 amendments to the Computer Fraud and Abuse Act, the Secret Service was authorized to investigate any and all violations of section 1030, pursuant to an agreement between the Secretary of Treasury and the Attorney General. The 1996 amendments, however, concentrated Secret Service jurisdiction on certain specified subsections of section 1030. The current amendment would return full jurisdiction to the Secret Service and would allow the Justice and Treasury Departments to decide on the appropriate work-sharing balance between the two. This will enable the Secret Service to investigate a wide range of potential White House network intrusions, as well as intrusions into remote sites (outside of the White House) that could impact the safety and security of its protectees, and to continue its missions to protect the nation's critical infrastructure and financial payment systems.

The USA Act also authorizes, for the first time, a counter-terrorism fund in the Treasury of the United States to reimburse Justice Department for any costs incurred in connection with the fight against terrorism. I first authored this counter-terrorism fund in S. 1319, the 21st Century Department of Justice Appropriations Authorization Act, which Senator HATCH and I introduced in August.

Specifically, this counter-terrorism fund may be used: (1) to reestablish an office or facility that has been damaged as the result of any domestic or international terrorism incident; (2) to provide support to counter, investigate, or prosecute domestic or international terrorism, including paying rewards in connection with these activities; (3) to conduct terrorism threat assessments of Federal agencies; and (4) for costs incurred in connection with detaining individuals in foreign countries who are accused of acts of terrorism in violation of United States law.

This bill provides enhanced surveillance procedures for the investigation of terrorism and other crimes. The challenge before us has been to strike a reasonable balance to protect both the security and the liberties of our people. In some respects, the changes made are appropriate and important ones to update surveillance and investigative procedures in light of new technology and experience with current law. Yet, as I noted at the beginning of my statement, in other respects, I have deep concerns that we may be increasing surveillance powers and the sharing of criminal justice information without adequate checks on how information may be handled and without adequate accountability in the form of judicial review.

The bill contains a number of sensible proposals that should not be controversial.

For example, sections 201 and 202 of the USA Act would add to the list of crimes that may be used as predicates for wiretaps certain offenses which are specifically tailored to the terrorist threat. In addition to crimes that relate directly to terrorism, the list would include crimes of computer fraud and abuse which are committed by terrorists to support and advance their illegal objectives.

The bill, in section 206, would authorize the use of roving wiretaps in the course of a foreign intelligence investigation and brings FISA into line with criminal procedures that allow surveillance to follow a person, rather than requiring a separate court order identifying each telephone company or other communication common carrier whose assistance is needed. This is a matter on which the Attorney General and I reached early agreement. This is the kind of change that has a compelling justification, because it recognizes the ease with which targets of investigations can evade surveillance by changing phones. In fact, the original roving wiretap authority for use in criminal investigations was enacted as part of the Electronic Communications Privacy Act, ECPA, in 1986. I was proud to be the primary Senate sponsor of that earlier law.

Paralleling the statutory rules applicable to criminal investigations, the formulation I originally proposed made clear that this roving wiretap authority must be requested in the application before the FISA court was authorized to order such roving surveillance authority. Indeed, the Administration agrees that the FISA court may not grant such authority sua sponte. Nevertheless, we have accepted the Administration's formulation of the new roving wiretap authority, which requires the FISA court to make a finding that the actions of the person whose communications are to be intercepted could have the effect of thwarting the identification of a specified facility or place. While no amendment is made to the statutory directions for what must be included in the application for a FISA electronic surveillance order, these applications should include the necessary information to support the FISA court's finding that roving wiretap authority is warranted.

Section 220 of this bill authorizes nationwide service of search warrants in terrorism investigations. This will allow the judge who is most familiar with the developments in a fast-breaking and complex terrorism investigation to make determinations of probable cause, no matter where the property to be searched is located. This will not only save time by avoiding having to bring up-to-speed another judge in another jurisdiction where the property is located, but also serves privacy and Fourth Amendment interests in ensuring that the most knowledgeable judge makes the determination of probable cause. The bill, in section 209, also authorizes voice mail messages to be seized on the authority of a probable cause search warrant rather than through the more burdensome and time-consuming process of a wiretap.

The bill updates the laws pertaining to electronic records in three primary ways. First, in section 210, the bill authorizes the nationwide service of subpoenas for subscriber information and expands the list of items subject to subpoena to include the means and source of payment for the service.

In section 211, the bill equalizes the standard for law enforcement access to cable subscriber records on the same basis as other electronic records. The Cable Communications Policy Act, passed in 1984 to regulate various aspects of the cable television industry, did not take into account the changes in technology that have occurred over the last fifteen years. Cable television companies now often provide Internet access and telephone service in addition to television programming. This amendment clarifies that a cable company must comply with the laws governing the interception and disclosure of wire and electronic communications just like any other telephone company or Internet service provider. The amendments would retain current standards that govern the release of customer records for television programming.

Finally, the bill, in section 212, permits, but does not require, an electronic communications service to disclose the contents of and subscriber information about communications in emergencies involving the immediate danger of death or serious physical injury. Under current law, if an ISP's customer receives an e-mail death threat from another customer of the same ISP, and the victim provides a copy of the communication to the ISP, the ISP is limited in what actions it may take. On one hand, the ISP may disclose the contents of the forwarded communication to law enforcement (or to any other third party as it sees fit). See 18 U.S.C. §2702(b)(3). On the other hand, current law does not expressly authorize the ISP to voluntarily provide law enforcement with the identity, home address, and other subscriber information of the user making the threat. See 18 U.S.C. §2703(c)(1)(B),(C) (permitting disclosure

to government entities only in response to legal process). In those cases where the risk of death or injury is imminent, the law should not require providers to sit idly by. This voluntary disclosure, however, in no way creates an affirmative obligation to review customer communications in search of such imminent dangers.

Also, under existing law, a provider (even one providing services to the public) may disclose the contents of a customer's communications—to law enforcement or anyone else—in order to protect its rights or property. See 18 U.S.C. §2702(b)(5). However, the current statute does not expressly permit a provider voluntarily to disclose non-content records (such as a subscriber's login records) to law enforcement for purposes of self-protection. See 18 U.S.C. §2703(c)(1)(B). Yet the right to disclose the content of communications necessarily implies the less intrusive ability to disclose non-content records. Cf. *United States* v. *Auler*, 539 F.2d 642, 646 n.9 (7th Cir. 1976) (phone company's authority to monitor and disclose conversations to protect against fraud necessarily implies right to commit lesser invasion of using, and disclosing fruits of, pen register device) (citing *United States* v. *Freeman*, 524 F.2d 337, 341 (7th Cir. 1975)). Moreover, as a practical matter providers must have the right to disclose the facts surrounding attacks on their systems. When a telephone carrier is defrauded by a subscriber, or when an ISP's authorized user launches a network intrusion against his own ISP, the provider must have the legal ability to report the complete details of the crime to law enforcement. The bill clarifies that service providers have the statutory authority to make such disclosures.

There is consensus that the existing legal procedures for pen register and trap-and-trace authority are antiquated and need to be updated. I have been proposing ways to update the pen register and trap and trace statutes for several years, but not necessarily in the same ways as the Administration initially proposed. In fact, in 1998, I introduced with then-Senator Ashcroft, the E-PRIVACY Act, S. 2067, which proposed changes in the pen register laws. In 1999, I introduced the E-RIGHTS Act, S. 934, also with proposals to update the pen register laws.

Again, in the last Congress, I introduced the Internet Security Act, S. 2430, on April 13, 2000, that proposed: 1, changing the pen register and trap and trace device law to give nationwide effect to pen register and trap and trace orders obtained by Government attorneys and obviate the need to obtain identical orders in multiple Federal jurisdictions; 2, clarifying that such devices can be used for computer transmissions to obtain electronic addresses, not just on telephone lines; and 3, as a guard against abuse, providing for meaningful judicial review of government attorney applications for pen registers and trap and trace devices.

As the outline of my earlier legislation suggests, I have long supported modernizing the pen register and trap and trace device laws by modifying the statutory language to cover the use of these orders on computer transmissions; to remove the jurisdictional limits on service of these orders; and to update the judicial review procedure, which, unlike any other area in criminal procedure, bars the exercise of judicial discretion in reviewing the justification for the order. The USA Act, in section 216, updates the pen register and trap and trace laws only in two out of three respects I believe are important, and without allowing meaningful judicial review. Yet, we were able to improve the Administration's initial proposal, which suffered from the same problems as the provision that was hastily taken up and passed by the Senate, by voice vote, on September 13, 2001, as an amendment to the Commerce Justice State Appropriations Act.

The existing legal procedures for pen register and trap-and-trace authority require service of individual orders for installation of pen register or trap and trace device on the service providers that carried the targeted communications. Deregulation of the telecommunications industry has had the consequence that one communication may be carried by multiple providers. For example, a telephone call may be carried by a competitive local exchange carrier, which passes it at a switch to a local Bell Operating Company, which passes it to a long distance carrier, which hands it to an incumbent local exchange carrier elsewhere in the U.S., which in turn may finally hand it to a cellular carrier. If these carriers do not pass source information with each call, identifying that source may require compelling information from a host of providers located throughout the country.

Under present law, a court may only authorize the installation of a pen register or trap device "within the jurisdiction of the court." As a result, when one provider indicates that the source of a communication is a carrier in another district, a second order may be necessary. The Department of Justice has advised, for example, that in 1996, a hacker (who later turned out to be launching his attacks from a foreign country) extensively penetrated computers belonging to the Department of Defense. This hacker was dialing into a computer at Harvard University and used this computer as an intermediate staging point in an effort to conceal his location and identity. Investigators obtained a trap and trace order instructing the phone company, Nynex, to trace these calls, but Nynex could only report that the communications were coming to it from a long-distance carrier, MCI. Investigators then applied for a court order to obtain the connection information from MCI, but since the hacker was no longer actually using the connection, MCI could not identify its source. Only if the investigators could have served MCI with a trap and trace order while the hacker was actively on-line could they have successfully traced back and located him.

In another example provided by the Department of Justice, investigators encountered similar difficulties in attempting to track Kevin Mitnick, a criminal who continued to hack into computers attached to the Internet despite the fact that he was on supervised release for a prior computer crime conviction. The FBI attempted to trace these electronic communications while they were in progress. In order to evade arrest, however, Mitnick moved around the country and used cloned cellular phones and other evasive techniques. His hacking attacks would often pass through one of two cellular carriers, a local phone company, and then two Internet service providers. In this situation, where investigators and service providers had to act quickly to trace Mitnick in the act of hacking, only many repeated attempts—accompanied by an order to each service provider—finally produced success. Fortunately, Mitnick was such a persistent hacker that he gave law enforcement many chances to complete the trace.

This duplicative process of obtaining a separate order for each link in the communications chain can be quite time-consuming, and it serves no useful purpose since the original court has already authorized the trace. Moreover, a second or third order addressed to a particular carrier that carried part of a prior communication may prove useless during the next attack; in computer intrusion cases, for example, the target may use an entirely different path (i.e., utilize a different set of intermediate providers) for his or her subsequent activity.

The bill would modify the pen register and trap and trace statutes to allow for nationwide service of a single order for installation of these devices, without the necessity of returning to court for each new carrier. I support this change.

The language of the existing statute is hopelessly out of date and speaks of a pen register or trap and trace "device" being "attached" to a telephone "line." However, the rapid computerization of the telephone system has changed the tracing process. No longer are such functions normally accomplished by physical hardware components attached to telephone lines. Instead, these functions are typically performed by computerized collection and retention of call routing information passing through a communications system.

The statute's definition of a "pen register" as a "device" that is "attached" to a particular "telephone line" is particularly obsolete when applied to the wireless portion of a cellular phone call, which has no line to which anything can be attached. While courts have authorized pen register orders for wireless phones based on the

notion of obtaining access to a "virtual line," updating the law to keep pace with current technology is a better course.

Moreover, the statute is ill-equipped to facilitate the tracing of communications that take place over the Internet. For example, the pen register definition refers to telephone "numbers" rather than the broader concept of a user's communications account. Although pen register and trap orders have been obtained for activity on computer networks, Internet service providers have challenged the application of the statute to electronic communications, frustrating legitimate investigations. I have long supported updating the statute by removing words such as "numbers . . . dialed" that do not apply to the way that pen/trap devices are used and to clarify the statute's proper application to tracing communications in an electronic environment, but in a manner that is technology neutral and does not capture the content of communications. That being said, I have been concerned about the FBI and Justice Department's insistence over the past few years that the pen/trap devices statutes be updated with broad, undefined terms that continue to flame concerns that these laws will be used to intercept private communications content.

The Administration's initial pen/trap device proposal added the terms "routing" and "addressing" to the definitions describing the information that was authorized for interception on the low relevance standard under these laws. The Administration and the Department of Justice flatly rejected my suggestion that these terms be defined to respond to concerns that the new terms might encompass matter considered content, which may be captured only upon a showing of probable cause, not the mere relevancy of the pen/trap statute. Instead, the Administration agreed that the definition should expressly exclude the use of pen/trap devices to intercept "content," which is broadly defined in 18 U.S.C. 2510(8).

While this is an improvement, the FBI and Justice Department are shortsighted in their refusal to define these terms. We should be clear about the consequence of not providing definitions for these new terms in the pen/trap device statutes. These terms will be defined, if not by the Congress, then by the courts in the context of criminal cases where pen/trap devices have been used and challenged by defendants. If a court determines that a pen register has captured "content," which the FBI admits such devices do, in violation of the Fourth Amendment, suppression may be ordered, not only of the pen register evidence by any other evidence derived from it. We are leaving the courts with little or no guidance of what is covered by "addressing" or "routing."

The USA Act also requires the government to use reasonably available technology that limits the interception under the pen/trap device laws "so as not to include the contents of any wire or electronic communications." This limitation on the technology used by the government to execute pen/trap orders is important since, as the FBI advised me in June 2000, pen register devices "do capture all electronic impulses transmitted by the facility on which they are attached, including such impulses transmitted after a phone call is connected to the called party." The impulses made after the call is connected could reflect the electronic banking transactions a caller makes, or the electronic ordering from a catalogue that a customer makes over the telephone, or the electronic ordering of a prescription drug.

This transactional data intercepted after the call is connected is "content." As the Justice Department explained in a May 1998 letter to then-House Judiciary Committee Chairman HENRY HYDE, "the retrieval of the electronic impulses that a caller necessarily generated in attempting to direct the phone call" does not constitute a "search" requiring probable cause since "no part of the substantive information transmitted after the caller had reached the called party" is obtained. But the Justice Department made clear that "all of the information transmitted after a phone call is connected to the called party . . . is substantive in nature. These electronic impulses are the 'contents' of the call: They are not used to direct or process the call, but instead convey certain messages to the recipient."

When I added the direction on use of reasonably available technology (codified as 18 U.S.C. 3121(c)) to the pen register statute as part of the Communications Assistance for Law Enforcement Act (CALEA) in 1994, I recognized that these devices collected content and that such collection was unconstitutional on the mere relevance standard. Nevertheless, the FBI advised me in June 2000, that pen register devices for telephone services "continue to operate as they have for decades" and that "there has been no change . . . that would better restrict the recording or decoding of electronic or other impulses to the dialing and signaling information utilized in call processing." Perhaps, if there were meaningful judicial review and accountability, the FBI would take the statutory direction more seriously and actually implement it.

Due in significant part to the fact that pen/trap devices in use today collect "content," I have sought in legislation introduced over the past few years to update and modify the judicial review procedure for pen register and trap and trace devices. Existing law requires an attorney for the government to certify that the information likely to be obtained by the installation of a pen register or trap and trace device will be relevant to an ongoing criminal investigation. The court is required to issue an order upon seeing the prosecutor's certification. The court is not authorized to look behind the certification to evaluate the judgement of the prosecutor.

I have urged that government attorneys be required to include facts about their investigations in their applications for pen/trap orders and allow courts to grant such orders only where the facts support the relevancy of the information likely to be obtained by the orders. This is not a change in the applicable standard, which would remain the very low relevancy standard. Instead, this change would simply allow the court to evaluate the facts presented by a prosecutor, and, if it finds that the facts support the government's assertion that the information to be collected will be relevant, issue the order. Although this change will place an additional burden on law enforcement, it will allow the courts a greater ability to assure that government attorneys are using such orders properly.

Some have called this change a "rollback" in the statute, as if the concept of allowing meaningful judicial review was an extreme position. To the contrary, this is a change that the Clinton Administration supported in legislation transmitted to the Congress last year. This is a change that the House Judiciary Committee also supported last year. In the Electronic Communications Privacy Act, H.R. 5018, that Committee proposed that before a pen/trap device "could be ordered installed, the government must first demonstrate to an independent judge that 'specific and articulable facts reasonably indicate that a crime has been, is being, or will be committed, and information likely to be obtained by such installation and use . . . is relevant to an investigation of that crime.'" (Report 106-932, 106th Cong. 2d Sess., Oct. 4, 2000, p. 13). Unfortunately, the Bush Administration has taken a contrary position and has rejected this change in the judicial review process.

Currently, an owner or operator of a computer that is accessed by a hacker as a means for the hacker to reach a third computer, cannot simply consent to law enforcement monitoring of the computer. Instead, because the owner or operator is not technically a party to the communication, law enforcement needs wiretap authorization under Title III to conduct such monitoring. I have long been interested in closing this loophole. Indeed, when I asked about this problem, the FBI explained to me in June 2000 that:

> This anomaly in the law creates an untenable situation whereby providers are sometimes forced to sit idly by as they witness hackers enter and, in some situations, destroy or damage their systems and networks while law enforcement begins the detailed process of seeking court authorization to assist them. In the real world, the situation is akin to a homeowner being forced to helplessly watch a burglar or vandal while police seek a search warrant to enter the dwelling.

I therefore introduced as part of the Internet Security Act, S. 2430, in 2000, an exception to the wiretap statute that would explicitly permit such monitoring without a wiretap if prior consent is obtained from the person whose computer is being hacked through and used to send "harmful interference to a lawfully operating computer system."

The Administration initially proposed a different formulation of the exception that would have allowed an owner/operator of any computer connected to the Internet to consent to FBI wiretapping of any user who violated a workplace computer use policy or online service term of service and was thereby an "unauthorized" user. The Administration's proposal was not limited to computer hacking offenses under 18 U.S.C. 1030 or to conduct that caused harm to a computer or computer system. The Administration rejected these refinements to their proposed wiretap exception, but did agree, in section 217 of the USA Act, to limit the authority for wiretapping with the consent of the owner/operator to communications of unauthorized users without an existing subscriber or other contractual relationship with the owner/operator.

This bill will make significant changes in the sharing of confidential criminal justice information with various Federal agencies. For those of us who have been concerned about the leaks from the FBI that can irreparably damage reputations of innocent people and frustrate investigations by alerting suspects to flee or destroy material evidence, the Administration's insistence on the broadest authority to disseminate such information, without any judicial check, is disturbing. Nonetheless, I believe we have improved the Administration's initial proposal in responsible ways. Only time will tell whether the improvements we were able to reach agreement on are sufficient.

At the outset, we should be clear that current law allows the sharing of confidential criminal justice information, but with close court supervision. Federal Rule of Criminal Procedure 6(e) provides that matters occurring before a grand jury may be disclosed only to an attorney for the government, such other government personnel as are necessary to assist the attorney and another grand jury. Further disclosure is also allowed as specifically authorized by a court.

Similarly, section 2517 of title 18, United States Code provides that wiretap evidence may be disclosed in testimony during official proceedings and to investigative or law enforcement officers to the extent appropriate to the proper performance of their official duties. In addition, the wiretap law allows disclosure of wiretap evidence "relating to offenses other than specified in the order" when authorized or approved by a judge. Indeed, just last year, the Justice Department assured us that "law enforcement agencies have authority under current law to share title III information regarding terrorism with intelligence agencies when the information is of overriding importance to the national security." (Letter from Robert Raben, Assistant Attorney General, September 28, 2000).

For this reason, and others, the Justice Department at the time opposed an amendment proposed by Senators KYL and FEINSTEIN to S. 2507, the Intelligence Authorization Act for FY 2001, that would have allowed the sharing of foreign intelligence and counterintelligence information collected from wiretaps with the intelligence community. I deferred to the Justice Department on this issue and sought changes in the proposed amendment to address the Department's concern that this provision was not only unnecessary but also "could have significant implications for prosecutions and the discovery process in litigation," "raises significant issues regarding the sharing with intelligence agencies of information collected about United States persons," and jeopardized "the need to protect equities relating to ongoing criminal investigations." In the end, the amendment was revised to address the Justice Department's concerns and passed the Senate as a free-standing bill, S. 3205, the Counterterrorism Act of 2000. The House took no action on this legislation.

The Administration initially proposed adding a sweeping provision to the wiretap statute that broadened the definition of an "investigative or law enforcement officer" who may receive disclosures of information obtained through wiretaps to include Federal law enforcement, intelligence, national security, national defense, protective and immigration personnel and the President and Vice President. This proposal troubled me because information intercepted by a wiretap has enormous potential to infringe upon the privacy rights of innocent people, including people who are not even suspected of a crime and merely happen to speak on the telephone with the targets of an investigation. For this reason, the authority to disclose information obtained through a wiretap has always been carefully circumscribed in law.

While I recognize that appropriate officials in the executive branch of government should have access to wiretap information that is important to combating terrorism or protecting the national security, I proposed allowing such disclosures where specifically authorized by a court order. Further, with respect to information relating to terrorism, I proposed allowing the disclosure without a court order as long as the judge who authorized the wiretap was notified as soon as practicable after the fact. This would have provided a check against abuses of the disclosure authority by providing for review by a neutral judicial official. At the same time, there was a little likelihood that a judge would deny any requests for disclosure in cases where it was warranted.

On Sunday, September 30, the Administration agreed to my proposal, but within two days, it backed away from its agreement. I remain concerned that the resulting provision will allow the unprecedented, widespread disclosure of this highly sensitive information without any notification to or review by the court that authorizes and supervises the wiretap. This is clearly an area where our Committee will have to exercise close oversight to make sure that the newly-minted disclosure authority is not being abused.

The Administration offered three reasons for reneging on the original deal. First, they claimed that the involvement of the court would inhibit Federal investigators and attorneys from disclosing information needed by intelligence and national security officials. Second, they said the courts might not have adequate security and therefore should not be told that information was disclosed for intelligence or national security purposes. And third, they said the President's constitutional powers under Article II give him authority to get whatever foreign intelligence he needs to exercise his national security responsibilities.

I believe these concerns are unfounded. Federal investigators and attorneys will recognize the need to disclose information relevant to terrorism investigations. Courts can be trusted to keep secrets and recognize the needs of the President.

Current law requires that such information be used only for law enforcement purposes. This provides an assurance that highly intrusive invasions of privacy are confined to the purpose for which they have been approved by a court, based on probable cause, as required by the Fourth Amendment. Current law calls for minimization procedures to ensure that the surveillance does not gather information about private and personal conduct and conversations that are not relevant to the criminal investigation.

When the Administration reneged on the agreement regarding court supervision, we turned to other safeguards and were more successful in changing other questionable features of the Administration's bill. The Administration accepted my proposal to strike the term "national security" from the description of wiretap information that may be shared throughout the executive branch and replace it with "foreign intelligence" information. This change is important in clarifying what information may be disclosed because the term "foreign intelligence" is specifically defined by statute whereas "national security" is not.

Moreover, the rubric of "national security" has been used to justify some particularly unsavory activities by the government in the past. We must have at least some assurance that we are not embarked on a course that will lead to a repetition of these abuses because the statute will now more clearly define what type of information is subject to disclosure. In addition, Federal officials who receive the information

may use it only as necessary to the conduct of their official duties. Therefore, any disclosure or use outside the conduct of their official duties remains subject to all limitations applicable to their retention and dissemination of information of the type of information received. This includes the Privacy Act, the criminal penalties for unauthorized disclosure of electronic surveillance information under chapter 119 of title 18, and the contempt penalties for unauthorized disclosure of grand jury information. In addition, the Attorney General must establish procedures for the handling of information that identifies a United States person, such as the restrictions on retention and dissemination of foreign intelligence and counterintelligence information pertaining to United States persons currently in effect under Executive Order 12333.

While these safeguards do not fully substitute for court supervision, they can provide some assurance against misuse of the private, personal, and business information about Americans that is acquired in the course of criminal investigations and that may flow more widely in the intelligence, defense, and national security worlds.

The wiretap statute was not the only provision in which the Administration sought broader authority to disclose highly sensitive investigative information. It also proposed broadening Rule 6(e) of the Federal Rules of Criminal Procedure to allow the disclosure of information relating to terrorism and national security obtained from grand jury proceedings to a broad range of officials in the executive branch of government. As with wiretaps, few would disagree that information learned in a criminal investigation that is necessary to combating terrorism or protecting the national security ought to be shared with the appropriate intelligence and national security officials. The question is how best to regulate and limit such disclosures so as not to compromise the important policies of secrecy and confidentiality that have long applied to grand jury proceedings.

I proposed that we require judicial review of requests to disclose terrorism and foreign intelligence information to officials in the executive branch beyond those already authorized to receive such disclosures. Once again, the Administration agreed to my proposal on Sunday, September 30, but reneged within two days. As a result, the bill does not provide for any judicial supervision of the new authorization for dissemination of grand jury information throughout the executive branch. The bill does contain the safeguards that I have discussed with respect to law enforcement wiretap information. However, as with the new wiretap disclosure authority, I am troubled by this issue and plan to exercise the close oversight of the Judiciary Committee to make sure it is not being abused.

The Administration also sought a provision that would allow the sharing of foreign intelligence information throughout the executive branch of the government notwithstanding any current legal prohibition that may prevent or limit its disclosure. I have resisted this proposal more strongly than anything else that still remains in the bill. What concerns me is that it is not clear what existing prohibitions this provision would affect beyond the grand jury secrecy rule and the wiretap statute, which are already covered by other provisions in the bill. Even the Administration, which wrote this provision, has not been able to provide a fully satisfactory explanation of its scope.

If there are specific laws that the Administration believes impede the necessary sharing of information on terrorism and foreign intelligence within the executive branch, we should address those problems through legislation that is narrowly targeted to those statutes. Tacking on a blunderbuss provision whose scope we do not fully understand can only lead to consequences that we cannot foresee. Further, I am concerned that such legislation, broadly authorizing the secret sharing of intelligence information throughout the executive branch, will fuel the unwarranted fears and dark conspiracy theories of Americans who do not trust their government. This was another provision on which the Administration reneged on its agreement with me; it agreed to drop it on September 30, but resurrected it within two days, insisting that it remain in the bill. I have made efforts to mitigate its potential for abuse somewhat by adding the same safeguards that apply to disclosure of law enforcement wiretap and grand jury information.

Another issue that has caused serious concern relates to the Administration's proposal for so-called "sneak and peek" search warrants. The House Judiciary Committee dropped this proposal entirely from its version of the legislation. Normally, when law enforcement officers execute a search warrant, they must leave a copy of the warrant and a receipt for all property seized at the premises searched. Thus, even if the search occurs when the owner of the premises is not present, the owner will receive notice that the premises have been lawfully searched pursuant to a warrant rather than, for example, burglarized.

Two circuit courts of appeal, the Second and the Ninth Circuits, have recognized a limited exception to this requirement. When specifically authorized by the issuing judge or magistrate, the officers may delay providing notice of the search to avoid compromising an ongoing investigation or for some other good reason. However, this authority has been carefully circumscribed.

First, the Second and Ninth Circuit cases have dealt only with situations where the officers search a premises without seizing any tangible property. As the Second Circuit explained, such searches are "less intrusive than a conventional search with physical seizure because the latter deprives the owner not only of privacy but also of the use of his property." *United States* v. *Villegas*, 899 F.2d 1324, 1337 (2d Cir. 1990).

Second, the cases have required that the officers seeking the warrant must show good reason for the delay. Finally, while the courts have allowed notice of the search may be delayed, it must be provided within a reasonable period thereafter, which should generally be no more than seven days. The reasons for these careful limitations were spelled out succinctly by Judge Sneed of the Ninth Circuit: "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." *United States* v. *Freitas*, 800 F.2d 1451, 1456 (9th Cir. 1986).

The Administration's original proposal would have ignored some of the key limitations created by the case law of sneak and peek search warrants. First, it would have broadly authorized officers not only to conduct surreptitious searches, but also to secretly seize any type of property without any additional showing of necessity. This type of warrant, which has never been addressed by a published decision of a Federal appellate court, has been referred to in a law review article written by an FBI agent as a "sneak and steal" warrant. See K. Corr, "Sneaky But Lawful: The Use of Sneak and Peek Search Warrants," 43 U. Kan. L. Rev. 1103, 1113 (1995). Second, the proposal would simply have adopted the procedural requirements of 18 U.S.C. § 2705 for providing delayed notice of a wiretap. Among other things, this would have extended the permissible period of delay to a maximum of 90 days, instead of the presumptive seven-day period provided by the caselaw on sneak and peek warrants.

I was able to make significant improvements in the Administration's original proposal that will help to ensure that the government's authority to obtain sneak and peek warrants is not abused. First, the provision that is now in section 213 of the bill prohibits the government from seizing any tangible property or any wire or electronic communication or stored electronic information unless it makes a showing of reasonable necessity for the seizure. Thus, in contrast to the Administration's original proposal, the presumption is that the warrant will authorize only a search unless the government can make a specific showing of additional need for a seizure. Second, the provision now requires that notice be given within a reasonable time of the execution of the warrant rather than giving a blanket authorization for up to a 90-day delay. What constitutes a reasonable time, of course, will depend upon the circumstances of the particular case. But I would expect courts

to be guided by the teachings of the Second and the Ninth Circuits that, in the ordinary case, a reasonable time is no more than seven days.

Several changes in the Foreign Intelligence Surveillance Act, FISA, are designed to clarify technical aspects of the statutory framework and take account of experience in practical implementation. These changes are subject to the four-year sunset.

The USA Act, in section 207, changes the duration of electronic surveillance under FISA in cases of an agent of a foreign power, other than a United States person, who acts in the United States as an officer or employee of a foreign power or as a member of an international terrorist group. Current law limits court orders in these cases to 90 days, the same duration as for United States persons. Experience indicates, however, that after the initial period has confirmed probable cause that the foreign national meets the statutory standard, court orders are renewed repeatedly and the 90-day renewal becomes an unnecessary procedural for investigators taxed with far more pressing duties.

The Administration proposed that the period of electronic surveillance be changed from 90 days to one year in these cases. This proposal did not ensure adequate review after the initial stage to ensure that the probable cause determination remained justified over time. Therefore, the bill changes the initial period of the surveillance from 90 to 120 days and changes the period for extensions from 90 days to one year. The initial 120-day period provides for a review of the results of the surveillance or search directed at an individual before one-year extensions are requested. These changes do not affect surveillance of a United States person.

The bill also changes the period for execution of an order for physical search under FISA from 45 to 90 days. This change applies to United States persons as well as foreign nationals. Experience since physical search authority was added to FISA in 1994 indicates that 45 days is frequently not long enough to plan and carry out a covert physical search. There is no change in the restrictions which provide that United States persons may not be the targets of search or surveillance under FISA unless a judge finds probable cause to believe that they are agents of foreign powers who engage in specified international terrorist, sabotage, or clandestine intelligence activities that may involve a violation of the criminal statutes of the United States.

The bill, in section 208, seeks to ensure that the special court established under FISA has sufficient judges to handle the workload. While changing the duration of orders and extensions will reduce the number of cases in some categories, the bill retains the court's role in pen register and trap and trace cases and expands the court's responsibility for issuing orders for records and other tangible items needed for counterintelligence and counterterrorism investigations. Upon reviewing the court's requirements, the Administration requested an increase in the number of Federal district judges designated for the court from seven to 11 of whom no less than three shall reside within 20 miles of the District of Columbia. The latter provision ensures that more than one judge is available to handle cases on short notice and reduces the need to invoke the alternative of Attorney General approval under the emergency authorities in FISA.

Other changes in FISA and related national security laws are more controversial. In several areas, the bill reflects a serious effort to accommodate the requests for expanded surveillance authority with the need for safeguards against misuse, especially the gathering of intelligence about the lawful political or commercial activities of Americans. One of the most difficult issues was whether to eliminate the existing statutory "agent of a foreign power" standards for surveillance and investigative techniques that raise important privacy concerns, but not at the level that the Supreme Court has held to require a court order and a probable cause finding under the Fourth Amendment. These include pen register and trap and trace devices, access to business records and other tangible items held by third parties, and access to records that have statutory privacy protection. The latter include telephone, bank, and credit records.

The "agent of a foreign power" standard in existing law was designed to ensure that the FBI and other intelligence agencies do not use these surveillance and investigative methods to investigate the lawful activities of Americans in the name of an undefined authority to collect foreign intelligence or counterintelligence information. The law has required a showing of reasonable suspicion, less than probable cause, to believe that a United States person is an "agent of a foreign power" engaged in international terrorism or clandestine intelligence activities.

However, the "agent of a foreign power" standard is more stringent than the standard under comparable criminal law enforcement procedures which require only a showing of relevance to a criminal investigation. The FBI's experience under existing laws since they were enacted, at various time over the past 15 years has been that, in practice, the requirement to show reasonable suspicion that a person is an "agent of a foreign power" has been almost as burdensome as the requirement to show probable cause required by the Fourth Amendment for more intrusive techniques. The FBI has made a clear case that a relevance standard is appropriate for counterintelligence and counterterrorism investigations, as well as for criminal investigations.

The challenge, then, was to define those investigations. The alternative proposed by the Administration was to cover any investigation to obtain foreign intelligence information. This was extremely broad, because the definition includes any information with respect to a foreign power that relates to, and if concerning a United States person is necessary to, the national defense or the security of the United States or the conduct of the foreign affairs of the United States. This goes far beyond FBI counterintelligence and counterterrorism requirements. Instead, the bill requires that use of the surveillance technique or access to the records concerning a United States person be relevant to an investigation to protect against international terrorism or clandestine intelligence activities.

In addition, an investigation of a United States person may not be based solely on activities protected by the First Amendment. This framework applies to pen registers and trap and trace under section 215, access to records and other items under section 215, and the national security authorities for access to telephone, bank, and credit records. Lawful political dissent and protest by American citizens against the government may not be the basis for FBI counterintelligence and counterterrorism investigations under these provisions.

A separate issue for pen registers and trap and trace under FISA is whether the court should have the discretion to make the decision on relevance. The Administration has insisted on a certification process. I discussed this issue as it comes up in the criminal procedures for pen registers and trap and trace under title 18, and my concerns apply to the FISA procedures as well.

Among the more controversial changes in FISA requested by the Administration was the proposal to allow surveillance and search when "a purpose" is to obtain foreign intelligence information. Current law requires that the secret procedures and different probable cause standards under FISA be used only if a high-level executive official certifies that "the purpose" is to obtain foreign intelligence formation. The Administration's aim was to allow FISA surveillance and search for law enforcement purposes, so long as there was at least some element of a foreign intelligence purpose. This proposal raised constitutional concerns, which were addressed in a legal opinion provided by the Justice Department.

The Justice Department opinion did not defend the constitutionality of the original proposal. Instead, it addressed a suggestion made by Senator FEINSTEIN to the Attorney General at the Judiciary Committee hearing to change "the purpose" to "a significant purpose." No matter what statutory change is made even the Department concedes that the court may impose a constitutional requirement of "primary purpose" based on the appellate court decisions upholding FISA against constitutional challenges over the past 20 years.

Section 218 of the bill adopts "significant purpose," and it will be up to the courts to determine how far law enforcement agencies may use FISA for criminal investigation and prosecution beyond the scope of the statutory definition of "foreign intelligence information."

In addition, I proposed and the Administration agreed to an additional provision in Section 505 that clarifies the boundaries for consultation and coordination between officials who conduct FISA search and surveillance and Federal law enforcement officials including prosecutors. Such consultation and coordination is authorized for the enforcement of laws that protect against international terrorism, clandestine intelligence activities of foreign agents, and other grave foreign threats to the nation. Protection against these foreign-based threats by any lawful means is within the scope of the definition of "foreign intelligence information," and the use of FISA to gather evidence for the enforcement of these laws was contemplated in the enactment of FISA. The Justice Department's opinion cites relevant legislative history from the Senate Intelligence Committee's report in 1978, and there is comparable language in the House report.

The Administration initially proposed that the Attorney General be authorized to detain any alien indefinitely upon his certification that the alien met the criteria of the terrorism grounds of the Immigration and Nationality Act, or was engaged in any other activity endangering the national security of the United States. Under close questioning by both Senator KENNEDY and Senator SPECTER at the Committee hearing on September 25, the Attorney General said that his proposal was intended only to allow the government to hold an alien suspected of terrorist activity while deportation proceedings were ongoing. In response to a question by Senator SPECTER, the Attorney General said: "Our intention is to be able to detain individuals who are the subject of deportation proceedings on other grounds, to detain them as if they were the subject of deportation proceedings on terrorism." The Justice Department, however, continued to insist on broader authority, including the power to detain even if the alien was found not to be deportable.

I remain concerned about the provision, in section 412, but I believe that we have twice improved it from the original proposal offered by the Administration, first in S. 1510 and second in the bill we pass today. S. 1510 provided that the Justice Department had to charge an alien with an immigration or criminal violation within seven days of taking custody, and that the merits of the Attorney General's certification were subject to judicial review. The bill we vote on today is further improved. First, if an alien is found not to be removable, he must be released from custody. Second, the Attorney General can only delegate the power to certify an alien to the Deputy Attorney General, ensuring greater accountability and preventing the certification decision from being made by low-level officials. Third, the Attorney General must review his certification of an alien every six months. Fourth, an alien who is found to be removable but has not been removed, and whose removal is unlikely in the reasonably foreseeable future, may be detained only if the Attorney General demonstrates that release of the alien will adversely affect national security or the safety of the community or any person. This improvement is essential to preserve the constitutionality of the bill. Fifth, habeas corpus review of detention is made available in the District where the detention is occurring, instead of only in the District Court in the District of Columbia. Despite these improvements, this remains a major and controversial new power for the Attorney General, and I would urge him and his successors to employ great discretion in using it.

In addition, the Administration initially proposed a sweeping definition of terrorist activity and new powers for the Secretary of State to designate an organization as a terrorist organization for purposes of immigration law. We were able to work with the Administration to refine this definition to limit its application to individuals who had innocent contacts with non-designated organizations. We also limited the retroactive effect of these new definitions. If an alien solicited funds or membership, or provided material support for an organization that was not designated at that time by the Secretary of State, the alien will have the opportunity to show that he did not know and should have known that his acts would further the organization's terrorist activity. This is substantially better than the administration's proposal, which by its terms, would have empowered the INS to deport someone who raised money for the African National Congress in the 1980s.

Throughout our negotiations on these issues, Senator KENNEDY provided steadfast leadership. Although neither of us are entirely pleased with the final product, it is far better than it would have been without his active involvement.

I was disappointed that the Administration's initial proposal authorizing the President to impose unilateral food and medical sanctions would have undermined a law we passed last year with overwhelming bipartisan support.

Under that law, the President already has full authority to impose unilateral food and medicine sanctions during this crisis because of two exceptions built into the law that apply to our current situation. Nevertheless, the Administration sought to undo this law and obtain virtually unlimited authority in the future to impose food and medicine embargoes, without making any effort for a multi-lateral approach in cooperation with other nations. Absent such a multi-lateral approach, other nations would be free to step in immediately and take over business from American firms and farmers that they are unilaterally barred from pursuing.

Over 30 farm and export groups, including the American Farm Bureau Federation, the Grocery Manufacturers of America, the National Farmers Union, and the U.S. Dairy Export Council, wrote to me and explained that the Administration proposal would "not achieve its intended policy goal."

I worked with Senator ENZI, and other Senators, on substitute language to give the Administration the tools it needs in this crisis. This substitute has been carefully crafted to avoid needlessly hurting American farmers in the future, yet it will assure that the U.S. can engage in effective multilateral sanctions.

This bipartisan agreement limits the authority in the bill to existing laws and executive orders, which give the President full authority regarding this conflict, and grants authority for the President to restrict exports of agricultural products, medicine or medical devices. I continue to agree with then-Senator Ashcroft, who argued in 1999 that unilateral U.S. food and medicine sanctions simply do not work when he introduced the "Food and Medicine for the World Act." As recently as October 2000, then-Senator Ashcroft pointed out how broad, unilateral embargoes of food or medicine are often counterproductive. Many Republican and Democratic Senators made it clear just last year that the U.S. should work with other countries on food and medical sanctions so that the sanctions will be effective in hurting our enemies, instead of just hurting the U.S. I am glad that with Senator ENZI's help, we were able to make changes in the trade sanctions provision to both protect our farmers and help the President during this crisis.

Title III of this bill contains money laundering provisions agreed upon by the relevant House and Senate committees. I commend the Chairman of the Senate Banking Committee, Senator SARBANES, for working with the House to produce a balanced and effective package of measures to combat international money laundering and the financing of terrorism.

The Senate included money laundering provisions in the original USA Act, but those provisions were removed from the bill the House passed the following day. Instead, the House passed a separate money laundering bill, H.R. 3004, on October 17. House and Senate negotiators then met to resolve the differences between the bills and produce the language contained in the bill the Senate considers today.

I am very pleased that the House has agreed to include money laundering provisions in anti-terrorism legislation. Preventing money laundering is a crucial part of our efforts to defeat terrorism, and it was important for Congress to develop a bipartisan approach to strengthening our laws. This bill contains such an approach.

I am also pleased that a number of provisions that would have undermined the Civil Asset Forfeiture Act of 2000, which I sponsored in the Senate, have been removed. In addition, this bill does not include language that would have unduly expanded administrative subpoena powers in all money laundering cases. A more targeted approach was necessary, and has been produced.

This measure could not be considered today and would not be in the improved condition it is without the steadfast commitment of our Majority Leader. Senator DASCHLE deserves all the credit for all that is good in this bill. Without his commitment and focus, we simply would not be in the position to pass this bill today.

On my behalf and more importantly on behalf of the American people, I want to publicly acknowledge his vital role in this legislation.

I have done my best under the circumstances and want to thank especially Senator KENNEDY for his leadership on the Immigration parts of the bill. My efforts have not been completely successful and there are a number of provisions on which the Administration has insisted with which I disagree. Frankly, the agreement of September 30, 2001 on the sharing of criminal justice information would have led to a better balanced bill. I could not stop the Administration from reneging on the agreement any more than I could have sped the process to reconstitute this bill in the aftermath of those breaches. In these times we need to work together to face the challenges of international terrorism. I have sought to do so in good faith.

We have worked around the clock for the past month to put forward the best legislative package we could. While I share the administration's goal of promptly providing the tools necessary to deal with the current terrorist threat, I feel strongly that our responsibilities include equipping such tools with safety features to ensure that these tools do not cause harm and are not misused.

I want to conclude my remarks with thanks for the efforts of many staff members who have worked tirelessly under unusual and enormously inconvenient circumstances to help us craft the legislation before us today. In particular, I want to thank Mark Childress and Andrea LaRue on the staff of Majority Leader DASCHLE, and David Hoppe on the staff of Republican Leader LOTT. I would also like to thank Makan Delrahim, Jeff Taylor, Stuart Nash, and Leah Belaire with Senator HATCH, the Ranking Member of the Judiciary Committee, Melody Barnes and Esther Olavarria with Senator KENNEDY, Neil McBride and Eric Rosen with Senator BIDEN, Bob Schiff with Senator FEINGOLD, and Stacy Baird and Beth Stein with Senator CANTWELL. Finally, I would like to thank my own Judiciary Committee staff, especially Bruce Cohen, Beryl Howell, Julie Katzman, Ed Pagano, John Elliff, David James, Ed Barron, Tim Lynch, Susan Davies, Manu Bhardwaj, Liz McMahon, and Tara Magner.

I ask unanimous consent that a section-by-section analysis be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE UNITING AND STRENGTHENING AMERICA BY PROVIDING APPROPRIATE TOOLS REQUIRED TO INTERCEPT AND OBSTRUCT TERRORISM (USA PATRIOT) ACT OF 2001, H.R. 3162—SECTION-BY SECTION ANALYSIS

Sec. 1. Short title and table of contents. Both S. 1510 passed by the Senate on October 11, 2001 (the "Senate bill"), and H.R. 2975 passed by the House of Representatives on October 12, 2001, included this section containing the short title "Uniting and Strengthening America (USA) Act of 2001" and the table of contents for the Act. H.R. 3162, the bill subsequently passed by the House on October 24, 2001 (the "House bill"), changed the title to the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001."

Sec. 2. Construction; severability. Both the House and Senate bills included this rule of construction to provide that any portion of this Act found to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed to give it the maximum effect permitted by law and that any portion found invalid or unenforceable in its entirety shall be severable from the rest of the Act.

TITLE I—ENHANCING DOMESTIC SECURITY AGAINST TERRORISM

Sec. 101. Counterterrorism fund. Both the House and Senate bills included this provision to establish a counterterrorism fund in the Treasury of the United States, without affecting prior appropriations, to reimburse Department of Justice components for costs incurred in connection with terrorism and terrorism prevention, rebuild any Justice Department component damaged or destroyed as a result of a terrorism incident, pay terrorism-related rewards, conduct terrorism threat assessments, and reimburse Federal agencies for costs incurred in connection with detaining suspected terrorists in foreign countries. Not in original Administration proposal.

Sec. 102. Sense of Congress condemning discrimination against Arab and Muslim Americans. Both the House and Senate bills included this provision to condemn acts of violence and discrimination against Arab Americans, American Muslims, and Americans from South Asia, and to declare that every effort must be taken to protect their safety. Not in original Administration proposal.

Sec. 103. Increased funding for the technical support center at the Federal Bureau of Investigation. Both the House and Senate bills included this provision to authorize $200,000,000 per year for fiscal years 2002, 2003 and 2004 for the Technical Support Center established in section 811 of the Antiterrorism and Effective Death Penalty Act of 1996 to help meet the demands of activities to combat terrorism and enhance the technical support and tactical operations of the FBI. Not in original Administration proposal.

Sec. 104. Requests for Military Assistance to Enforce Prohibition in Certain Emergencies. Both the House and Senate bills included this provision to authorize the Attorney General to request military assistance in support of Department of Justice activities relating to the enforcement of 18 U.S.C. §2332c during an emergency situation involving a weapon of mass destruction. Current law references a statute that was repealed in 1995, relating to chemical weapons. Not in original Administration proposal.

Sec. 105. Expansion of National Electronic Crime Task Force Initiative. Both the House and Senate bills included this provision to allow the Secret Service to develop a national network of electronic crime task forces, based on the highly successful New York Electronic Crimes Task Force model, for the purpose of preventing, detecting, and investigating various forms of electronic crimes, including potential terrorist attacks against critical infrastructure and financial payment systems. Not in original Administration proposal.

Sec. 106. Presidential authority. Both the House and Senate bills included this provision to give to the President, in limited circumstances involving armed hostilities or attacks against the United States, the power to confiscate and vest in the United States the property of enemies of the United States during times of national emergency, which was permitted by the Trading with the Enemy Act, 40 app. U.S.C. §§5(b), until 1977, when the International Economic Emergency Act was passed. The new provision permits the President, when the United States is engaged in military hostilities or has been subject to attack, to confiscate property of any foreign country, person or organization involved in hostilities or attacks on the United States. This section also permits courts, when reviewing determinations made by the executive branch, to consider classified evidence ex parte and in camera. Same as original Administration proposal.

TITLE II—ENHANCED SURVEILLANCE PROCEDURES

[Note: Elimination of original Administration proposal to allow government use of wiretap information on U.S. citizens obtained illegally overseas in violation of the Fourth Amendment and of foreign government laws.]

Sec. 201. Authority to intercept wire, oral, and electronic communications relating to terrorism. Both the House and Senate bills included this provision to add criminal violations relating to terrorism to the list of predicate statutes in the criminal procedures for interception of communications under chapter 119 of title 18, United States Code. Not in original Administration proposal.

Sec. 202. Authority to intercept wire, oral, and electronic communications relating to computer fraud and abuse offenses. Both the House and Senate bills included this provision to add criminal violations relating to computer fraud and abuse to the list of predicate statutes in the criminal procedures for interception of communications under chapter 119 of title 18, United States Code. Not in original Administration proposal.

Sec. 203. Authority to share criminal investigative information. Both the House and Senate bills included provisions amending the criminal procedures for interception of communications under chapter 119 of title 18, United States Code, and the grand jury procedures under Rule 6(e) of the Federal Rules of Criminal Procedures to authorize disclosure of foreign intelligence information obtained by such interception or by a grand jury to any Federal law enforcement, intelligence, national security, national defense, protective or immigration personnel to assist the official receiving that information in

the performance of his official duties. Section 203(a) requires that within a reasonable time after disclosure of any grand jury information, an attorney for the government notify the court of such disclosure and the departments, agencies or entities to which disclosure was made. Section 203(b) pertains to foreign intelligence information obtained by intercepting communications pursuant to a court-ordered wiretap. Section 203(c) also authorizes such disclosure of information obtained as part of a criminal investigation notwithstanding any other law.

The information must meet statutory definitions of foreign intelligence or counterintelligence or foreign intelligence information. Recipients may use that information only as necessary for their official duties, and use of the information outside those limits remains subject to applicable penalties, such as penalties for unauthorized disclosure under chapter 119, contempt penalties under Rule 6(e) and the Privacy Act. The Attorney General must establish procedures for disclosure of information that identifies a United States person, such as the current procedures established under Executive Order 12333 for the intelligence community. Modified Administration proposal to limit scope of personnel eligible to receive information. In case of grand jury information, limited proposal to require notification to court after disclosure.

Sec. 204. Clarification of intelligence exceptions from limitations on interception and disclosure of wire, oral, and electronic communications. Both the House and Senate bills included this provision to amend the criminal procedures for interception of wire, oral, and electronic communications in title 18, United States Code, to make clear that these procedures do not apply to the collection of foreign intelligence information under the statutory foreign intelligence authorities. Not in original Administration proposal.

Sec. 205. Employment of translators by the Federal Bureau of Investigation. Both the House and Senate bills included this provision to authorize the FBI Director to expedite the employment of personnel as translators to support counterterrorism investigations and operations without regard to applicable Federal personnel requirements and limitations. Not in original Administration proposal.

Sec. 206. Roving surveillance authority under the Foreign Intelligence Surveillance Act of 1978. Both the House and Senate bills included this provision to modify the Foreign Intelligence Surveillance Act ("FISA") to allow surveillance to follow a person who uses multiple communications devices or locations, a modification which conforms FISA to the parallel criminal procedure for electronic surveillance in 18 U.S.C. §2518(11)(b). The court order need not specify the person whose assistance to the surveillance is required (such as a particular communications common carrier), where the court finds that the actions of the target may have the effect of thwarting the identification of a specified person. Same as original Administration proposal.

Sec. 207. Duration of FISA surveillance of non-United States persons who are agents of foreign power. Both the House and Senate bills included this provision to change the initial period of a FISA order for a surveillance or physical search targeted against an agent of a foreign power from 90 to 120 days, and changes the period for extensions from 90 days to one year. One-year extensions for physical searches are subject to the requirement in current law that the judge find "probable cause to believe that no property of any United States person will be acquired during the period." Section 207 also changes the ordinary period for physical searches under FISA from 45 to 90 days. Narrower than Administration proposal which sought to eliminate the initial 90-day limitation and authorize surveillance for up to one year from the outset.

Sec. 208. Designation of judges. Both the House and Senate bills included this provision to increase the number of Federal district judges designated to serve on the FISA court from seven to 11, and requires that no less that 3 of the judges reside within 20 miles of the District of Columbia. Not in original Administration proposal.

Sec. 209. Seizure of voice-mail messages pursuant to warrants. Both the House and Senate bills included this provision to authorize government access to voice mails with a court order supported by probable cause in the same way e-mails currently may be accessed, and authorizes nationwide service with a single search warrant for voice mails. Current law, 18 U.S.C. §2510(1), defines "wire communication" to include "any electronic storage of such communication," with the result that the government must apply for a Title III wiretap order before it may obtain unopened voice mail messages held by a service provider. This section amends the definition of "wire communication" so that it no longer includes stored communications. It also amends 18 U.S.C. §2703 to specify that the government may use a search warrant (instead of a wiretap order) to compel the production of unopened voicemail, thus harmonizing the rules applicable to stored voice and non-voice (e.g., e-mail) communications. Same as Administration proposal.

Sec. 210. Scope of subpoenas for records of electronic communications. Both the House and Senate bills included this provision to broaden the types of records that law enforcement may obtain, pursuant to a subpoena, from electronic communications service providers by requiring providers to disclose the means and source of payment, including any bank account or credit card numbers. Current law allows the government to use a subpoena to compel communications providers to disclose a small class of records that pertain to electronic communications, limited to such records as the customer's name, address, and length of service. 18 U.S.C. §2703(c)(1)(C). Investigators may not use a subpoena to obtain such records as credit card number or other form of payment and must use a court order. In many cases, users register with Internet service providers using false names, making the form of payment critical to determining the user's true identity. Same as original Administration proposal.

Sec. 211. Clarification of scope. Both the House and Senate bills included provision to amend the Cable Communications Policy Act to clarify that when a cable company acts as a telephone company or an Internet service provider, it must comply with the same laws governing the interception and disclosure of wire and electronic communications that apply to any other telephone company or Internet service provider. This section also expressly provides, however, that authorized disclosures under this provision do not include records that reveal customer cable viewing activity. Modified original Administration proposal to specify that targets do not receive advance notice of wiretap order and amends title 47 to accomplish same purpose as administration proposal.

Sec. 212. Emergency disclosure of electronic communications to protect life and limb. Both the House and Senate bills included this provision to amend 18 U.S.C. §2702 to authorize providers of electronic communications services to disclose the communications (or records of such communications) of their subscribers if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person requires the disclosure of the information without delay. This section also corrects an anomaly in the current law by clearly permitting a provider to disclose non-content records (such as a subscriber's log-in records) as well as the contents of the customer's communications to protect their computer systems. Same as original Administration proposal.

Sec. 213. Authority for delaying notice of the execution of a warrant. Both the House and Senate bills included this provision to amend 18 U.S.C. §3103a to authorize a court to issue a search warrant in which the government is permitted to delay providing notice of the warrant's execution. Consistent with the requirements of case law from the Second and Ninth Circuits, this section also provides several limitations on this authority. See *United States v. Villegas*, 899 F.2d 1324 (2d Cir. 1990); *United States v. Freitas*, 800 F.2d 1451 (9th Cir. 1986). First, delayed notice is authorized only in cases where the government has demonstrated reasonable cause to believe that providing immediate notice would have an adverse result as defined in 18 U.S.C. §2705. Second, the provision prohibits the government from seizing any tangible property or any wire or electronic communication or stored wire or electronic communication unless it makes a showing of reasonable necessity for the seizure. Third, the warrant must require the giving of notice within a reasonable time of the execution of the search. Narrower than original Administration proposal, which would have permitted delay as law enforcement saw fit.

Sec. 214. Pen register and trap and trace authority under FISA. Both the House and Senate bills included this provision to modify FISA provisions for pen register and trap and trace to eliminate the requirement to show to the court that the target is in contact with an "agent of a foreign power." It replaces this requirement with a determination that the pen register or trap and trace is relevant to an investigation to protect against international terrorism or clandestine intelligence activities or to obtain foreign intelligence information not concerning U.S. persons. Any investigation of a United States person may not be based solely on activities protected by the First Amendment. Narrower than original Administration proposal, which would have allowed FISA surveillance if intelligence gathering was merely "a" purpose.

Sec. 215. Single-jurisdiction search warrants for terrorism. Both the House and Senate bills included this provision to amend Federal Rule of Criminal Procedure 41(a) to provide that warrants relating to the investigation of terrorist activities may be obtained in any district in which the activities related to the terrorism may have occurred, regardless of where the warrants will be executed. Same as Administration proposal.

Sec. 220. Nationwide service of search warrants for electronic surveillance. Both the House and Senate bills included this provision to amend 18 U.S.C. §2703(a) to authorize courts with jurisdiction over the offense to issue search warrants for electronic communications in electronic storage anywhere in the United States, without requiring the intervention of their counterparts in the districts where Internet service providers are located. Narrower than Administration proposal in that it limits forum shopping problem by limiting to courts with jurisdiction over the offense.

Sec. 221. Trade sanctions. Both the House and Senate bills included this provision to authorize the President unilaterally to restrict exports of agricultural products, medicine or medical devices to the Taliban or the territory of Afghanistan controlled by the Taliban. Narrower than original Administration proposal which would have undermined the congressional approval requirement, conferring upon the President control of agricultural and medical exports "to all designated terrorists and narcotics entities wherever they are located."

Sec. 222. Assistance to law enforcement agencies. Both the House and Senate bills included this provision that this Act does not "addressing" information for Internet users does not authorize the interception of the content of any such communications. It further requires the government to use the latest available technology to insure that a pen register or trap and trace device does not intercept the content of any communications. Finally, it provides for a report to the court on each use of "Carnivore"-like devices on packet-switched data networks. Makes a number of improvements over Administration proposal, including exclusion of content, exclusion of ISP liability, and Carnivore report.

Sec. 217. Interception of computer trespasser communications. Both the House and Senate bills included this provision to allow computer service providers who are victims of attacks by computer trespassers to authorize persons acting under color of law to monitor trespassers on their computer systems in a narrow class of cases. A computer trespasser is defined as a person who accesses a protected computer without authorization and thus has no reasonable expectation of privacy in any communications transmitted to, through, or from the protected computer. However, it does not include a person known by the owner or operator of the protected computer to have an existing contractual relationship with the owner or operator for access to all or part of the protected computer. Narrower than original Administration proposal, which did not exclude service provider subscribers from definition of trespasser and did not limit interception authority to only those communications through the computer in question.

Sec. 218. Foreign intelligence information. Both the House and Senate bills included this provision to amend FISA to require a certification that "a significant purpose" rather than "the purpose" of a surveillance or search under FISA is to obtain foreign intelligence information. Narrower than Administration proposal, which would have allowed FISA surveillance if intelligence gathering was merely "a" purpose.

Sec. 219. Single-jurisdiction search warrants for terrorism. Both the House and Senate bills included this provision to amend Federal Rule of Criminal Procedure 41(a) to provide that warrants relating to the investigation of terrorist activities may be obtained in any district in which the activities related to the terrorism may have occurred, regardless of where the warrants will be executed. Same as Administration proposal.

Sec. 220. Nationwide service of search warrants for electronic surveillance. Both the House and Senate bills included this provision to amend 18 U.S.C. §2703(a) to authorize courts with jurisdiction over the offense to issue search warrants for electronic communications in electronic storage anywhere in the United States, without requiring the intervention of their counterparts in the districts where Internet service providers are located. Narrower than Administration proposal in that it limits forum shopping problem by limiting to courts with jurisdiction over the offense.

Sec. 221. Trade sanctions. Both the House and Senate bills included this provision to authorize the President unilaterally to restrict exports of agricultural products, medicine or medical devices to the Taliban or the territory of Afghanistan controlled by the Taliban. Narrower than original Administration proposal which would have undermined the congressional approval requirement, conferring upon the President control of agricultural and medical exports "to all designated terrorists and narcotics entities wherever they are located."

Sec. 222. Assistance to law enforcement agencies. Both the House and Senate bills included this provision that this Act does not impose any additional technical requirements on a provider of a wire or electronic communication service and that a provider of a wire or electronic communication service, landlord, custodian or other person who furnishes facilities or technical assistance pursuant to section 216 shall be reasonably compensated for expenditures incurred in providing such facilities or assistance. Not in original Administration proposal.

Sec. 223. Civil liability for certain unauthorized disclosures. H.R. 2975 included this provision to create civil liability for violations, including unauthorized disclosures, by law enforcement authorities of the electronic surveillance procedures set forth in title 18, United States Code (e.g., unauthorized disclosure of pen trap, wiretap, stored communications), or FISA information. Also requires administrative discipline of officials who engage in such unauthorized disclosures. Not in original Administration proposal.

Sec. 224. Sunset. H.R. 2975 included a provision to sunset certain amendments made by this title in 3 to 5 years. H.R. 3162 provides a 4-year sunset for sections 206, 201, 202, 203(b), 203(d), 205, 207, 209, 210, 212, 214, 215, 217, 218, 220, 223—at the end December 31, 2005, with the authorities "grandfathered" as to particular investigations based on offenses occurring prior to sunset. No sunset provided in original Administration proposal or S. 1510, and four-year sunset shorter than the five-year sunset in H.R. 2975.

TITLE III—INTERNATIONAL MONEY LAUNDERING ABATEMENT AND ANTI-TERRORIST FINANCING ACT OF 2001

[Note: Elimination of original Administration proposals to allow broad disclosure of individual tax return information; pre-trial restraint of legitimately obtained property in all criminal forfeiture cases; carve-out of tobacco companies from RICO liability for foreign excise taxes; and creation of new criminal offense to misrepresent identification when opening bank account. The Administration bill contained none of the money laundering provisions contained in either the Senate bill or H.R. 3004.]

Sec. 301. Short title. This section contains the short title of Title III, "International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001," which merges the short title of Title III of the Senate bill with the short title of H.R. 3004, which passed the House of Representatives on October 17, 2001 ("H.R. 3004"). This section also contains the table of contents for Title III.

Sec. 302. Findings and purposes. The Senate bill included this provision, which states the legislative findings and purposes in support of Title III.

Sec. 303. 4-Year congressional review; expedited consideration. Section 303, included in the Senate bill, provides that the provisions added and amendments made by Title III will terminate after September 30, 2004, if the Congress enacts a joint resolution to that effect, and that any such joint resolution will be given expedited consideration by the Congress.

Subtitle A—International Counter-Money Laundering and Related Measures

Sec. 311. Special measures for jurisdictions, financial institutions, or international transactions or accounts of primary money laundering concern. Section 311, included in both the Senate bill and H.R. 3004, adds a new section 5318A to the Bank Secrecy Act, to give the Secretary of the Treasury, in consultation with other senior government officials, authority (in the Secretary's discretion), to impose one or more of five new "special measures" against foreign jurisdictions, foreign financial institutions, transactions involving such jurisdictions or institutions, or one more types of accounts, that the Secretary, after consultation with Secretary of State and the Attorney General, determines to pose a "primary money laundering concern" to the United States. The special measures include: (1) requiring additional recordkeeping or reporting for particular transactions; (2) requiring the identification of the foreign beneficial owners of certain accounts at a U.S. financial institution; (3) requiring the identification of customers of a foreign bank who use an interbank payable-through account opened by that foreign bank at a U.S. bank, (4) requiring the identification of customers of a foreign bank who use an interbank correspondent account opened by that foreign bank at a U.S. bank; and (5) after consultation with the Secretary of State, the Attorney General, and the Chairman of the Federal Reserve Board, restricting or prohibiting the opening or maintaining of certain interbank correspondent or payable-through accounts. Measures (1) through (4) may not be imposed for more than 120 days except by regulation, and measure (5) may only be imposed by regulation.

Sec. 312. Special due diligence for correspondent accounts and private banking accounts. Section 312, included in both the Senate bill and H.R. 3004, adds a new subsection (i) to 31 U.S.C. §5318, to require a U.S. financial institution that maintains a correspondent account or private banking account for a non United States person to establish appropriate and, if necessary, enhanced due diligence procedures to detect and report instances of money laundering. The new provision also creates minimum anti-money laundering due diligence standards for U.S. financial institutions that enter into correspondent banking relationships with banks that operate under offshore banking licenses or under banking licenses issued by countries that (1) have been designated as noncooperative with international counter money laundering principles by an international body with the concurrence of the U.S. representative to that body, or (2) have been the subject of special measures authorized by section 311. Finally, the new provision creates minimum anti-money laundering due diligence standards for maintenance of private banking accounts by U.S. financial institutions. New section 31 U.S.C. §5318(i) will take effect 270 days after the date of enactment; the Secretary of the Treasury is required to issue regulations (in consultation with the appropriate Federal functional regulators) within 180 days of enactment further delineating the requirements of the new subsection, but the statute is to take effect whether or not such regulations are issued, and failure to issue final regulations shall in no way affect the enforceability of §5318(i) as added by section 312.

Sec. 313. Prohibition on United States correspondent accounts with foreign shell banks. Section 313, included in both the Senate bill and H.R. 3004, adds a new subsection (j) to 31 U.S.C. §5318, to bar depository institutions and brokers and dealers in securities operating in the United States from establishing, maintaining, administering, or managing correspondent accounts for foreign shell banks, other than shell bank vehicles affiliated with recognized and regulated depository institutions. The new 31 U.S.C. §5318(j) takes effect 60 days after enactment. The House receded to the Senate with respect to differences in the language of the versions of the provision in the Senate bill and H.R. 3004.

Sec. 314. Cooperative efforts to deter money laundering. Section 314, contained in the Senate bill, requires the Secretary of the Treasury to issue regulations, within 120 days of the date of enactment, to encourage

cooperation among financial institutions, financial regulators and law enforcement officials, and to permit the sharing of information by law enforcement and regulatory authorities with such institutions regarding persons reasonably suspected, based on credible evidence, of engaging in terrorist acts or money laundering activities. This section also allows (with notice to the Secretary of the Treasury) the sharing of information among banks involving possible terrorist or money laundering activity, and requires the Secretary of the Treasury to publish, at least semiannually, a report containing a detailed analysis of patterns of suspicious activity and other appropriate investigative insights derived from suspicious activity reports and law enforcement investigations. The final text of this section includes section 203 (Reports to the Financial Services Industry on Suspicious Financial Activities) and portions of section 205 (Public-Private Task Force on Terrorist Financing Issues) of H.R. 3004.

Sec. 315. Inclusion of foreign corruption offenses as money laundering crimes. Section 315, included in both the Senate bill and H.R. 3004 in somewhat different language, amends 18 U.S.C. §1956 to include foreign corruption offenses, certain U.S. export control violations, certain customs and firearm offenses, certain computer fraud offenses, and felony violations of the Foreign Agents Registration Act of 1938, to the list of crimes that constitute "specified unlawful activities" for purposes of the criminal money laundering provisions.

Sec. 316. Anti-terrorist forfeiture protection. Section 316, included in the Senate bill, establishes procedures to protect the rights of persons whose property may be subject to confiscation in the exercise of the government's anti-terrorism authority.

Sec. 317. Long-arm jurisdiction over foreign money launderers. Section 317, which was included in both the Senate bill and H.R. 3004, amends 18 U.S.C. §1956 to give United States courts "long-arm" jurisdiction over foreign persons committing money laundering offenses in the United States, over foreign banks opening U.S. bank accounts, and over foreign persons who convert assets ordered forfeited by a U.S. court. It also permits a Federal court dealing with such foreign persons to issue a pre-trial restraining order or take other action necessary to preserve property in the United States to satisfy an ultimate judgment. The Senate, but not the House, bill included language permitting the appointment by a Federal court of a receiver to collect and take custody of assets of a defendant to satisfy criminal or civil money laundering or forfeiture judgments; with respect to the latter provision, the House receded to the Senate.

Sec. 318. Laundering money through a foreign bank. Section 318, included in both the Senate bill and H.R. 3004, expands the definition of financial institution for purposes of 18 U.S.C. §§1956 and 1957 to include banks operating outside of the United States.

Sec. 319. Forfeiture of funds in United States interbank accounts. Section 319 combines sections 111, 112, and 113 of H.R. 3004 with section 319 of the Senate bill. This section amends 18 U.S.C. §981 to treat amounts deposited by foreign banks in interbank accounts with U.S. banks as having been deposited in the United States for purposes of the forfeiture rules, but grants the Attorney General authority, in the interest of justice and consistent with the United States' national interest, to suspend a forfeiture proceeding, based on that presumption. This section also adds a new subsection (k) to 31 U.S.C. §5318 to require U.S. financial institutions to reply to a request for information from a U.S. regulator relating to anti-money laundering compliance within 120 hours of receipt of such a request, and to require foreign banks that maintain correspondent accounts in the United States to appoint agents for service of process within the United States. The new 31 U.S.C. §5318(k) authorizes the Attorney General and the Secretary of the Treasury to issue a summons or subpoena to any such foreign bank seeking records, wherever located, relating to such a correspondent account, and it requires U.S. banks to sever correspondent arrangements with foreign banks that do not either comply with or contest any such summons or subpoena. Finally, section 319 amends section 413 of the Controlled Substances Act to authorize United States courts to order a convicted criminal to return property located abroad and to order a civil forfeiture defendant to return property located abroad pending trial on the merits. With respect to the provisions requiring a response to certain requests for information by U.S. regulators within 120 hours of receipt and the requirement that correspondent relationships with foreign banks that do not either respond or challenge subpoenas issued under new 31 U.S.C. §5318(k) must be terminated, the House receded to the Senate. With respect to the power to order convicted criminals to return property located abroad, the Senate receded to the House.

Sec. 320. Proceeds of foreign crimes. Section 320, included in both the Senate bill and H.R. 3004, amends 18 U.S.C. §981 to permit the United States to institute forfeiture proceedings against the proceeds of foreign criminal offenses found in the United States.

Sec. 321. Financial institutions specified in subchapter II of chapter 53 of Title 31, United States Code. Section 321, included in H.R. 3004, amends 31 U.S.C. §5312(2) to add credit unions, futures commission merchants, commodity trading advisors, or commodity pool operators to the definition of financial institution for purposes of the Bank Secrecy Act, and to provide that the term "Federal functional regulator" includes the Commodity Futures Trading Commission for purposes of the Bank Secrecy Act.

Sec. 322. Corporation represented by a fugitive. Section 322, included in both the Senate bill and H.R. 3004, extends the prohibition against the maintenance of a forfeiture proceeding on behalf of a fugitive to include a proceeding by a corporation whose majority shareholder is a fugitive and a proceeding in which the corporation's claim is instituted by a fugitive.

Sec. 323. Enforcement of foreign judgments. Section 323, included in both the Senate bill and H.R. 3004, permits the government to seek a restraining order to preserve the availability of property subject to a foreign forfeiture or confiscation judgment.

Sec. 324. Report and recommendation. Section 324, included in the Senate bill, directs the Secretary of the Treasury, in consultation with the Attorney General, the Federal banking agencies, the SEC, and other appropriate agencies to evaluate operation of the provisions of subtitle A of Title III of the Act and recommend to Congress any relevant legislative action, within 30 months of the date of enactment.

Sec. 325. Concentration accounts at financial institutions. Section 325, included in both the Senate bill and H.R. 3004, authorizes the Secretary of the Treasury to issue regulations concerning the maintenance of concentration accounts by U.S. depository institutions, to prevent an institution's customers from anonymously directing funds into or through such accounts.

Sec. 326. Verification of identification. Section 326(a), included in H.R. 3004, adds a new subsection (l) to 31 U.S.C. §5318 to require the Secretary of the Treasury to prescribe by regulation, jointly with each Federal functional regulator, minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at a financial institution, the minimum standards shall require financial institutions to implement, and customers (after being given adequate notice) to comply with, reasonable procedures concerning verification of customer identity, maintenance of records of identity verification, and consultation at account opening of lists of known or suspected terrorists provided to the financial institution by a government agency. The required regulations are to be issued within one year of the date of enactment.

Section 326(b), included in both the Senate bill and H.R. 3004, requires the Secretary of the Treasury, again in consultation with the Federal functional regulators (as well as other appropriate agencies), to submit a report to Congress within six months of the date of enactment containing recommendations about the most effective way to require foreign nationals to provide financial institutions in the United States with accurate identity information, comparable to that required to be provided by U.S. nationals, and to obtain an identification number that would function similarly to a U.S. national's tax identification number.

Sec. 327. Consideration of anti-money laundering record. Section 327, included in H.R. 3004, amends section 3(c) of the Bank Holding Company Act of 1956, and section 18(c) of the Federal Deposit Insurance Act to require the Federal Reserve Board and the Federal Deposit Insurance Corporation, respectively, to consider the effectiveness of a bank holding company or bank (within the jurisdiction of the appropriate agency) in combating money laundering activities, including in overseas branches, in ruling on any merger or similar application by the bank or bank holding company. The Senate receded to the House, with the agreement that the amendments will apply only to applications submitted after December 31, 2001.

Sec. 328. International cooperation on identification of originators of wire transfers. Section 328, included in H.R. 3004, requires the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to take all reasonable steps to encourage foreign governments to require the inclusion of the name of the originator in wire transfer instructions sent to the United States, and to report annually to the House Committee on Financial Services and the Senate Committee on Banking, Housing, and Urban Affairs concerning progress toward that goal.

Sec. 329. Criminal penalties. Section 329, included in the Senate bill, provides criminal penalties for officials who violate their trust in connection with the administration of Title III.

Sec. 330. International cooperation in investigations of money laundering, financial crimes, and the finances of terrorist groups. Section 330, included in H.R. 3004, states the sense of the Congress that the President should direct the Secretary of State, the Attorney General, or the Secretary of the Treasury, as appropriate and in consultation with the Federal Reserve Board, to seek negotiations with foreign financial supervisory agencies and other foreign officials, to ensure that foreign financial institutions maintain adequate records relating to any foreign terrorist organization or its membership, or any person engaged in money laundering or other financial crimes, and make such records available to U.S. law enforcement and financial supervisory personnel when appropriate.

Subtitle B—Bank Secrecy Act Amendments and Related Improvements

Sec. 351. Amendments relating to reporting of suspicious activities. Section 351, included in both the Senate bill and H.R. 3004, restates 31 U.S.C. §5318(g)(3) to clarify the terms of the safe harbor from civil liability for financial institutions filing suspicious activity reports pursuant to 31 U.S.C. §5318(g). The amendments to subsection (g)(3) also create a safe harbor from civil liability for banks that provide information in employment references sought by other banks pursuant to the amendment to the Federal Deposit Insurance Act made by section 355. The House receded to the Senate with respect to minor differences in wording between the House and Senate versions of the provision.

Sec. 352. Anti-money laundering programs. Section 352, included in both the Senate bill and H.R. 3004, amends 31 U.S.C. §5318(h) to require financial institutions to establish anti-money laundering programs and grants the Secretary of the Treasury authority to set minimum standards for such programs. The Senate receded to the House with respect to a provision in H.R. 3004 that the anti-money laundering program requirement take effect at the end of the 180-day period beginning on the date of enactment of the Act and a related provision that the Secretary of the Treasury shall prescribe regulations before the end of that 180-day period that consider the extent to which the requirements imposed under amended §5318(h) are commensurate with the size, location, and activities of the financial institutions to which the regulations apply.

Sec. 353. Penalties for violations of geographic targeting orders and certain recordkeeping requirements, and lengthening effective period of geographic targeting orders. Section 353, included generally in both the Senate bill and H.R. 3004, amends 31 U.S.C. §5321, 5322, and 5326 to clarify that penalties for violation of the Bank Secrecy Act and its implementing regulations also apply to violations of Geographic Targeting Orders issued under 31 U.S.C. §5326, and to certain recordkeeping requirements relating to funds transfers. The House receded to a provision in the Senate bill that also amends 31 U.S.C. §5326 to make the period of a geographic target order 180 days.

Sec. 354. Anti-money laundering strategy. Section 354, included in the Senate bill, amends 31 U.S.C. §5341(b) to add "money laundering related to terrorist funding" to the list of subjects to be dealt with in the annual National Money Laundering Strategy prepared by the Secretary of the Treasury pursuant to the Money Laundering and Financial Crimes Strategy Act of 1998.

Sec. 355. Authorization to include suspicions of illegal activity in written employment references. Section 355, included in both the Senate bill and H.R. 3004, amends §18 of the Federal Deposit Insurance Act to permit (but not require) a bank to include information, in a response to a request for an employment reference by a second bank, about the possible involvement of a former institution-affiliated party in potentially unlawful activity. The House receded to the Senate with respect to a provision that the safe harbor from civil liability for a bank that provides information to a second bank applies unless the first bank acts with malicious intent.

Sec. 356. Reporting of suspicious activities by securities brokers and dealers; investment company study. Section 356(a), included generally in both the Senate bill and H.R. 3004, directs the Secretary of the Treasury, after consultation with the Securities and Exchange Commission and the Federal Reserve Board, to publish proposed regulations, on or before December 31, 2001, and final regulations on or before July 1, 2002, requiring broker-dealers to file suspicious activity reports. The Senate receded to the House with respect to the specific time requirements in section 356(a).

Sec. 356(b), included in H.R. 3004, authorizes the Secretary of the Treasury, in consultation with the Commodity Futures Trading Commission, to prescribe regulations requiring futures commission merchants, commodity trading advisors, and certain commodity pool operators to submit suspicious activity reports under 31 U.S.C. §5318(g).

Sec. 356(c), included in the Senate bill, requires the Secretary of the Treasury, the SEC and Federal Reserve Board to submit jointly to Congress, within one year of the date of enactment, recommendations for effective regulations to apply the provisions of 31 U.S.C. §§5311-30 to both registered and unregistered investment companies, as well as recommendations as to whether the Secretary should promulgate regulations treating personal holding companies as financial institutions that must disclose their beneficial owners when opening accounts or initiating funds transfers at any domestic financial institution.

Sec. 357. Special report on administration of bank secrecy provisions. Section 357, included in the Senate bill, directs the Secretary of the Treasury to submit a report to Congress, six months after the date of enactment, on the role of the IRS in the administration of the Bank Secrecy Act, with emphasis on whether IRS Bank Secrecy Act information processing responsibility (for reports filed by all financial institutions) or Bank Secrecy Act audit and examination responsibility (for certain non-bank financial institutions) should be retained or transferred.

Sec. 358. Bank Secrecy provisions and activities of the United States intelligence agencies. Section 358, included in the same general terms in both the Senate bill and H.R. 3004, contains amendments to various provisions of the Bank Secrecy Act, the Right to Financial Privacy Act, and the Fair Credit Reporting Act, to permit information to be used in the conduct of United States intelligence or counterintelligence activities to protect against international terrorism. This section combines the Senate and House provisions, with each body receding to the other in the case of particular language included in one version of the provision but not the other.

Sec. 359. Reporting of suspicious activities by underground banking systems. Section 359, included in both the Senate bill and H.R. 3004, clarifies that the Bank Secrecy Act treats certain underground banking systems as financial institutions, and that the funds transfer recordkeeping rules applicable to licensed money transmitters also apply to such underground systems. This section also directs the Secretary of the Treasury to report to Congress, within one year of the date of enactment, on the need for additional legislation or regulatory controls relating to underground banking systems. The House receded to the Senate with respect to certain technical changes in the definition of the underground banking systems at issue.

Sec. 360. Use of authority of the United States Executive Directors. Section 360, included in Senate bill, authorizes the Secretary of the Treasury to instruct the United States Executive Director of each of the international financial institutions (for example, the IMF and the World Bank) to use such Director's "voice and vote" to support loans and other use of resources to benefit nations that the President determines to be contributing to United States efforts to combat international terrorism, and to require the auditing of each international financial institution to ensure that funds are not paid to persons engaged in or supporting terrorism.

Sec. 361. Financial crimes enforcement network. Section 361, included in H.R. 3004, adds a new §310 to subchapter I of chapter 3 of title 31, United States Code, to make the Financial Crimes Enforcement Network ("FinCEN") a bureau within the Department of the Treasury, to specify the duties of FinCEN's Director, and to require the Secretary of the Treasury to establish operating procedures for the government-wide data access service and communications center that FinCEN maintains. Section 361 also authorizes appropriations for FinCEN for fiscal years 2002 through 2005. Finally, this section requires the Secretary to study methods for improving compliance with the reporting requirements for ownership of foreign bank and brokerage accounts by U.S. nationals imposed by regulations issued under 31 U.S.C. §5314. The required report is to be submitted within six months of the date of enactment and annually thereafter.

Sec. 362. Establishment of highly secure network. Section 362, included in H.R. 3004, directs the Secretary of the Treasury to establish, within nine months of enactment, a secure network with FinCEN that will allow financial institutions to file suspicious activity reports and provide such institutions with information regarding suspicious activities warranting special scrutiny.

Sec. 363. Increase in civil and criminal penalties for money laundering. Section 363, included in the Senate bill, increases from $100,000 to $1,000,000 the maximum civil and criminal penalties for a violation of provisions added to the Bank Secrecy Act by sections 311 and 312 of this Act.

Sec. 364. Uniform protection authority for Federal Reserve facilities. Section 364, included in H.R. 3004, authorizes certain Federal Reserve personnel to act as law enforcement officers and carry firearms to protect and safeguard Federal Reserve employees and premises.

Sec. 365. Reports relating to coins and currency received in nonfinancial trade or business. Section 365, included in H.R. 3004, adds 31 U.S.C. §5331 (and makes related and conforming changes) to the Bank Secrecy Act to require any person who receives more than $10,000 in coins or currency, in one transaction or two or more related transactions in the course of that person's trade or business, to file a report with respect to such transaction with FinCEN. Regulations implementing the new reporting requirement are to be promulgated within six months of enactment.

Sec. 366. Efficient use of currency transaction report system. Section 366, included in H.R. 3004, requires the Secretary of the Treasury to report to the Congress before the end of the one year period beginning on the date of enactment containing the results of a study of the possible expansion of the statutory system for exempting transactions from the currency transaction reporting requirements and ways to improve the use by financial institutions of the statutory exemption system as a way of reducing the volume of unneeded currency transaction reports.

Subtitle C—Currency Crimes

Sec. 371. Bulk cash smuggling into or out of the United States. Section 371, included in both the Senate bill and H.R. 3004, but with different language relating to forfeiture, creates a new Bank Secrecy Act offense, 31 U.S.C. §5332, involving the bulk smuggling of more than $10,000 in currency in any conveyance, article of luggage or merchandise or

container, either into or out of the United States, and related forfeiture provisions. The Senate receded to the House language.

Sec. 372. Forfeiture in currency reporting cases. Section 372, included in the Senate bill and H.R. 3004 with different language concerning mitigation, amends 31 U.S.C. §5317 to permit confiscation of funds in connection with currency reporting violations consistent with existing civil and criminal forfeiture procedures. The Senate receded to the House language.

Sec. 373. Illegal money transmitting businesses. Section 373, included in H.R. 3004, amends 18 U.S.C. §1960 to clarify the terms of the offense stated in that provision, relating to knowing operation of an unlicensed (under state law) or unregistered (under Federal law) money transmission business. This section also amends 18 U.S.C. §981(a) to authorize the seizure of funds involved in a violation of 18 U.S.C. §1960.

Sec. 374. Counterfeiting domestic currency and obligations. Section 374, included in H.R. 3004, makes a number of changes to the provisions of 18 U.S.C. §§470-473 relating to the maximum sentences for various counterfeiting offenses, and adds to the definition of counterfeiting in 18 U.S.C. §474 the making, acquiring, etc. of an analog, digital, or electronic image of any obligation or other security of the United States.

Sec. 375. Counterfeiting Foreign Currency and Obligations. Section 375, included in H.R. 3004, makes a number of changes to the provisions of 18 U.S.C. §§478-480 relating to the maximum sentences for various counterfeiting offenses involving foreign obligations or securities, and adds to the definition of counterfeiting in 18 U.S.C. §481 the making, acquiring, etc. of an analog, digital, or electronic image of any obligation or other security of a foreign government.

Sec. 376. Laundering the proceeds of terrorism. This provision expands the scope of predicate offenses for laundering the proceeds of terrorism to include "providing material support or resources to terrorist organizations," as that crime is defined in 18 U.S.C. §2339B of the criminal code. Same as original Administration proposal.

Sec. 377. Extraterritorial jurisdiction. This provision applies the financial crimes prohibitions to conduct committed abroad in situations where the tools or proceeds of the offense pass through or are in the United States. Same as original Administration proposal.

TITLE IV—PROTECTING THE BORDER

Subtitle A—Protecting the Northern Border

Sec. 401. Ensuring adequate personnel on the Northern border. Both the House and Senate bills included this provision to authorize the Attorney General to waive any CAP on the number of full time employees assigned to the INS on the northern border. Not in original Administration proposal.

Sec. 402. Northern border personnel. Both the House and Senate bills included this provision to authorize additional appropriations to allow for a tripling in personnel for the Border Patrol, INS Inspectors, and the US Customs Service in each State along the northern border, and an additional $50 million each to the INS and the US Customs Service to improve technology and acquire additional equipment for use at the northern border. Not in original Administration proposal.

Sec. 403. Access by the Department of State and the INS to certain identifying information in the criminal history records of visa applicants and applicants for admission to the United States. Both the House and Senate bills included this provision to give the State Department and INS access to the criminal history record information contained in the National Crime Information Center's Interstate Identification Index, Wanted Persons File, and any other information mutually agreed upon between the Attorney General and the agency receiving access. Same as original Administration proposal.

Sec. 404. Limited authority to pay overtime. Both the House and Senate bills included this provision to allow the Attorney General to authorize overtime pay for INS employees in an amount in excess of $30,000 during calendar year 2001, to ensure that experienced personnel are available to handle the increased workload generated by the events of September 11, 2001. Same as original Administration proposal but based on a Leahy-Conyers proposal.

Sec. 405. Report on the integrated automated fingerprint identification system for points of entry and overseas consular posts. Both the House and Senate bills included this provision to require the Attorney General to report to Congress on the feasibility of enhancing the FBI's Integrated Automated Fingerprint Identification System or other identification systems to identify foreign passport and visa holders who may be wanted in connection with a criminal investigation in the United States or abroad before issuing a visa to that person or their entry or exit from the United States. Not in original Administration proposal.

Subtitle B—Enhanced Immigration Provisions

Sec. 411. Definitions relating to terrorism. Both the House and Senate bills included this provision to amend the definition of "engage in terrorist activity" to clarify that an alien who solicits funds or membership or provides material support to a certified terrorist organization is inadmissible and removable. Aliens who solicit funds or membership or provide material support to organizations not designated as terrorist organizations have the opportunity to show that they did not know and should not have known that their actions would further terrorist activity. This section also creates a definition of "terrorist organization," which is not defined under current law, for purposes of making an alien inadmissible or removable. It defines a terrorist organization as one that is (1) designated by the Secretary of State as a terrorist organization under the process supplied by current law; (2) designated by the Secretary of State as a terrorist organization for immigration purposes; or (3) a group of two or more individuals that commits terrorist activities or plans or prepares to commit (including locating targets for) terrorist activities. The changes made by this section will apply to actions taken by an alien before enactment with respect to any group that was at that time certified by the Secretary of State. Narrower than original Administration proposal by allowing an alien to show support for non-designated organization was offered without knowledge of organization's terrorist activity.

Sec. 412. Mandatory detention of suspected terrorists; habeas corpus; judicial review. Both the House and Senate-passed bills included provisions to grant the Attorney General the authority to certify that an alien meets the criteria of the terrorism grounds of the Immigration and Nationality Act, or is engaged in any other activity that endangers the national security of the United States, upon a "reasonable grounds to believe" standard, and take such aliens into custody. This authority is delegable only to the Deputy Attorney General. The Attorney General must either begin removal proceedings against such aliens or bring criminal charges within seven days, or release them from custody. An alien who is charged but ultimately found not to be removable is to be released from custody. An alien who is found to be removable but has not been removed, and whose removal is unlikely in the reasonably foreseeable future, may be detained if the Attorney General demonstrates that release of the alien will adversely affect national security or the safety of the community or any person. Judicial review of any action taken under this section, including review of the merits of the certification, is available through habeas corpus proceedings, with appeal to the U.S. Court of Appeals for the D.C. Circuit. The Attorney General shall review his certification of an alien every six months. Narrower than original Administration proposal in numerous ways, including placing a 7-day limit on detention without charge, ordering release of aliens found not to be removable, and more meaningful judicial review of Attorney General's determination of national security risk posed by alien.

Sec. 413. Multilateral cooperation against terrorists. Both the House and Senate bills included this provision to provide new exceptions to the laws regarding disclosure of information from State Department records pertaining to the issuance of or refusal to issue visas to enter the U.S., and allows the sharing of this information with a foreign government on a case-by-case basis for the purpose of preventing, investigating, or punishing acts of terrorism. Based on original Administration proposal.

Sec. 414. Visa integrity and security. This section expresses the sense of the Congress that the Attorney General, in consultation with the Secretary of State, should fully implement the entry/exit system as expeditiously as practicable. Particular focus should be given to the utilization of biometric technology and the development of tamper-resistant documents. Not in original Administration proposal.

Sec. 415. Participation of Office of Homeland Security on Entry-Exit Task Force. This section includes the new Office of Homeland Security as a participant in the Entry and Exit Task Force established by the Immigration and Naturalization Service Data Management Improvement Act of 2000. Not in original Administration proposal.

Sec. 416. Foreign student monitoring program. This section seeks to implement the foreign student monitoring program created in 1996 by temporarily supplanting the collection of user fees mandated by the statute with an appropriation of $36,800,000 for the express purpose of fully and effectively implementing the program through January 2003. Thereafter, the program would be funded by user fees. Currently, all institutions of higher education that enroll foreign students or exchange visitors are required to participate in the monitoring program. This section expands the list of institutions to include air flight schools, language training schools, and vocational schools. Not in original Administration proposal.

Sec. 417. Machine readable passports. This section requires the Secretary of State to conduct an annual audit to assess precautionary measures taken to prevent the counterfeiting and theft of passports among countries that participate in the visa waiver program, and ascertain that designated countries have established a program to develop tamper-resistant passports. Results of the audit will be reported to Congress. This provision would advance the deadline for participating nations to develop machine readable passports to October 1, 2003, but permit the Secretary of State to waive the requirements imposed by the deadline if he finds that the program country is making sufficient progress to provide their nationals with machine-readable passports. Not in original Administration proposal.

Sec. 418. Prevention of consulate shopping. This section directs the State Department to examine what concerns, if any, are created by the practice of certain aliens to "shop" for a visa between issuing posts. Not in original Administration proposal.

Subtitle C—Preservation of Immigration Benefits for Victims of Terrorism

[Note: This subtitle was not in original Administration proposal. It is certain that some aliens fell victim to the terrorist attacks on the U.S. on September 11. For many families, these tragedies will be compounded by the trauma of husbands, wives, and children losing their immigration status due to the death or serious injury of a family member. These family members are facing deportation because they are out of status: they no longer qualify for their current immigration status or are no longer eligible to complete the application process because their loved one was killed or injured in the September 11 terrorist attack. Others are threatened with the loss of their immigration status, through no fault of their own, due to the disruption of communication and transportation that has resulted directly from the terrorist attacks. Because of these disruptions, people have been and will be unable to meet important deadlines, which will mean the loss of eligibility for certain benefits and the inability to maintain lawful status, unless the law is changed.

At the request of Congressman Conyers and Senator Leahy, this new subtitle (sections 421-428) was included in the final bill to modify the immigration laws to provide the humanitarian relief to these victims and their family members in preserving their immigration status.]

Sec. 421. Special immigrant status. This section provides permanent resident status to an alien who was the beneficiary of a petition filed (on or before September 11) to grant the alien permanent residence as a family-sponsored immigrant or employer-sponsored immigrant, or of an application for labor certification filed on or before September 11, if the petition or application was rendered null because of the disability of the beneficiary or loss of employment of the beneficiary due to physical damage to, or destruction of, the business of the petitioner or applicant as a direct result of the terrorist attacks on September 11, or because of the death of the petitioner or applicant as a direct result of the terrorist attacks. Permanent residence would be granted to an alien who was the spouse or child of an alien who was the beneficiary of a petition filed on or before September 11 to grant the beneficiary permanent residence as a family-sponsored immigrant (as long as the spouse or child follows to join not later than September 11, 2003). Permanent residence would be granted to the beneficiary of a petition for a nonimmigrant visa as the spouse or the fiance (and their children) of a U.S. citizen where the petitioning citizen died as a direct result of the terrorist attacks. This section also provides permanent resident status to the grandparents of a child both of whose parents died as a result of the terrorist attacks, if either of such deceased parents was a U.S. citizen or a permanent resident. Not in original Administration proposal.

Sec. 422. Extension of filing or reentry deadline. This section provides that an alien who was legally in a nonimmigrant status and was disabled as a direct result of the terrorist attacks on September 11 (and his or her spouse and children) may remain lawfully in the United States (and receive work authorization) until the later of the date that his or her status normally terminates or September 11, 2002. Such status is also provided to the nonimmigrant spouse and children of an alien who died as a direct result of the terrorist attacks. The Act provides that an alien who was lawfully present as a nonimmigrant at the time of the terrorist attacks will be granted 60 additional days to file an application for extension or change of status if the alien was prevented from so filing as a direct result of the terrorist attacks. Also, an alien who was lawfully present as a nonimmigrant at the time of the attacks but was then unable to timely depart the United States as a direct result of the attacks will be considered to have departed legally and will not be considered to have been unlawfully present for the purposes of section 212(a)(9) of the INA if departure occurs before November 11. Not in original Administration proposal.

Sec. 423. Humanitarian relief for certain surviving spouses and children. Current law provides that an alien who was the spouse of a U.S. citizen for at least 2 years before the citizen died shall remain eligible for immigrant status as an immediate relative. This also applies to the children of the alien. This section provides that if the citizen died as a direct result of the terrorist attacks, the 2-year requirement is waived. This section provides that if an alien spouse, child, or unmarried adult son or daughter had been the beneficiary of an immigrant visa petition filed by a permanent resident who died as a direct result of the terrorist attacks, the alien will still be eligible for permanent residence. In addition, if an alien spouse, child, or unmarried adult son or daughter of a permanent resident who died as a direct result of the terrorist attacks was present in the United States on September 11 but had not yet been petitioned for permanent residence, the alien can self-petition for permanent residence. The section also provides that an alien spouse or child of an alien who (1) died as a direct result of the terrorist attacks and (2) was a permanent resident (petitioned-for by an employer) or an applicant for adjustment of status for an employment-based immigrant visa, may have his or her application for adjustment adjudicated despite the death (if the application was filed prior to the death). Not in original Administration proposal.

Sec. 424. "Age-out" protection for children. Under current law, certain visas are only available to an alien until the alien's 21st birthday. This section provides that an alien whose 21st birthday occurs this September and who is a beneficiary for a petition or application filed on or before September 11 shall be considered to remain a child for 90 days after the alien's 21st birthday. For an alien whose 21st birthday occurs after this September, (and who had a petition for application filed on his or her behalf on or before September 11) the alien shall be considered to remain a child for 45 days after the alien's 21st birthday. Not in original Administration proposal.

Sec. 425. Temporary administrative relief. This section provides that temporary administrative relief may be provided to an alien who was lawfully present on September 10, was on that date the spouse, parent or child of someone who died or was disabled as a direct result of the terrorist attacks, and is not otherwise entitled to relief under any other provision of this legislation. Not in original Administration proposal.

Sec. 426. Evidence of death, disability, or loss of employment. This section instructs the Attorney General to establish appropriate standards for evidence demonstrating that a death, disability, or loss of employment due to physical damage to, or destruction of, a business, occurred as a direct result of the terrorist attacks on September 11. The Attorney General is not required to promulgate regulations prior to implementing this subtitle. Not in original Administration proposal.

Sec. 427. No Benefits to Terrorists or Family Members of Terrorists. This section states that no benefit under this subtitle shall be provided to anyone culpable for the terrorist attacks on September 11 or to any family member of such an individual. Not in original Administration proposal.

Sec. 428. Definitions. This section defines the term 'specified terrorist activity' as any terrorist activity conducted against the Government or the people of the United States on September 11, 2001. Not in original Administration proposal.

TITLE V—REMOVING OBSTACLES TO INVESTIGATING TERRORISM

Sec. 501. Attorney General's authority to pay rewards to combat terrorism. Both the House and Senate bills included this provision to authorize the Attorney General to offer rewards—payments to individuals who offer information pursuant to a public advertisement—to gather information to combat terrorism and defend the nation against terrorist acts without any dollar limitation (Current law limits rewards to $2 million). Rewards of $250,000 or more require the personal approval of the Attorney General or President and notice to Congress. Narrower than original Administration proposal.

Sec. 502. Secretary of State's authority to pay rewards. Both the House and Senate bills included this provision to authorize the Secretary of State to offer rewards—payments to individuals who offer information pursuant to a public advertisement—to gather information to combat terrorism and defend the nation against terrorist acts without any dollar limitation (Current law limits rewards to $5 million). Rewards of $100,000 or more require the personal approval of the Secretary of State and notice to Congress. Narrower than original Administration proposal.

Sec. 503. DNA identification of terrorists and other violent offenders. Both the House and Senate bills included this provision to authorize the collection of DNA sample from any person convicted of certain terrorism-related offenses and other crimes of violence, for inclusion in the national DNA database. Modified from original Administration proposal.

Sec. 504. Coordination with law enforcement. Both the House and Senate bills included this provision to amend FISA to authorize consultation between FISA officers and law enforcement officers to coordinate efforts to investigate or protect against international terrorism, clandestine intelligence activities, or other grave hostile acts of a foreign power or an agent of a foreign power. Not in original Administration proposal.

Sec. 505. Miscellaneous national security authorities. Both the House and Senate bills included this provision to modify current statutory provisions on access to telephone, bank, and credit records in counterintelligence investigations to remove the "agent of a foreign power" standard. The authority may be used only for investigations to protect against international terrorism or clandestine intelligence activities, and an investigation of a United States person may not be based solely on activities protected by the First Amendment. Narrower than original Administration proposal which simply removed "agent of foreign power" requirement.

Sec. 506. Extension of Secret Service jurisdiction. Both the House and Senate bills included this provision to give the Secret Service concurrent jurisdiction to investigate offenses relating to fraud and related activity in connection with computers, and permanently extends the current authority to investigate financial institution fraud. Not in original Administration proposal.

Sec. 607. Disclosure of educational records. Both the House and Senate bills included this provision to require application to a court to obtain educational records in the possession of an educational agency or institution if it is determined by the Attorney General or Secretary of Education (or their designee) that doing so could reasonably be expected to assist in investigating or preventing a federal terrorism offense or domestic or international terrorism. Limited immunity is given to persons producing such information action in good faith, and the Attorney General is directed to issue guidelines to protect confidentiality. Narrower than original Administration proposal.

Sec. 608. Disclosure of information from NCES surveys. Both the House and Senate bills included this provision to require application to a court to obtain reports, records and information in the possession of the National Center for Educational Statistics that are relevant to an authorized investigation or prosecution of terrorism. Limited immunity is given to persons producing such information acting in good faith, and the Attorney General is directed to issue guidelines to protect confidentiality. Narrower than original Administration proposal.

TITLE VI—PROVIDING FOR VICTIMS OF TERRORISM, PUBLIC SAFETY OFFICERS, AND THEIR FAMILIES

Subtitle A—Aid for Families of Public Safety Officers

Sec. 611. Expedited payment for public safety officers involved in the prevention, investigation, rescue, or recovery efforts related to a terrorist attack. Both the House and Senate bills included this provision to streamline the Public Safety Officers Benefits Program application process for family members of law enforcement officers, firefighters, and emergency personnel who perished or suffered serious injury in connection with prevention, investigation, rescue or recovery efforts related to a terrorist attack. The Public Safety Officers Benefits Program provides benefits for each of the families of law enforcement officers, fire fighters, emergency response squad members, ambulance crew members who are killed or permanently and totally disabled in the line of duty ($151,635 in FY 2001). Current regulations, however, require the families of public safety officers who have fallen in the line of duty to go through a cumbersome and time-consuming application process. Not in original Administration proposal.

Sec. 612. Technical correction with respect to expedited payments for heroic public safety officers. Both the House and Senate bills included this provision to make technical corrections to Public Law 107-37 to provide sufficient information to make expedited Public Safety Officers Benefits Program payments to the fallen firefighters, emergency personnel and law enforcement officers who perished or were disabled during the rescue and recovery efforts related to the terrorist attacks of September 11, 2001. Modified from original Administration proposal.

Sec. 613. Public safety officers benefits program payment increase. Both the House and Senate-passed bills included this provision to raise the total amount of Public Safety Officers Benefits Program payment to $250,000 and is effective for any death or disability occurring on or after January 1, 2001. Not in original Administration proposal.

Sec. 614. Office of Justice programs. Both the House and Senate bills included this provision to amend the Office of Justice Program's authorities to enhance the authority of the Assistant Attorney General to coordinate and manage emergency response activities of its various components including the Public Safety Officers Benefits Program. Modified from original Administration proposal.

Subtitle B—Amendments to the Victims of Crime Act of 1984

[Note: The original Administration proposal did not include most of the provisions of this subtitle to streamline the administration of the Crime Victims Fund.]

Sec. 621. Crime victims fund. Both the House and Senate bills included this provision to authorize the Office for Victims of Crime (OVC) to replenish the antiterrorism emergency reserve with up to $50 million and establishes a mechanism to allow for replenishment in future years. Funds added to the Crime Victims Fund to respond to the September 11 attacks shall not be subject to the cap or the new formula provisions. A technical clarification includes the September 11th Victim Compensation Fund established in Public Law 107-42 as one of the Federal benefits that should be a primary payer to the States. This section also replaces the annual cap on the Fund with a self-regulating system that ensures stability in the amounts distributed while preserving the amounts remaining for use in future years; it authorizes private gift-giving to the Fund; and it increases the portion of the Fund available for discretionary grants and assistance to victims of Federal crime. Significant expansion of original Administration proposal.

Sec. 622. Crime victim compensation. Both the House and Senate bills included this provision to increase the minimum threshold for the annual grant to State compensation programs. It clarifies that a payment of compensation to a victim shall not used in means tests for Federal benefit programs. A technical clarification removes the dual requirement that State crime victim compensation programs cover victims of terrorism occurring outside the United States. Not in original Administration proposal.

Sec. 623. Crime victim assistance. Both the House and Senate bills included this provision to authorize States to give VOCA funds to U.S. Attorney's Offices in jurisdictions where the U.S. Attorney is the local prosecutor. It prohibits victim assistance programs from discriminating against certain victims; authorizes grants to eligible victim assistance programs for program evaluation and compliance efforts; and allows use of funds for fellowships, clinical internships and training programs. Not in original Administration proposal.

Sec. 624. Victims of terrorism. Both the House and Senate bills included this provision to conform VOCA's domestic terrorism section to the international terrorism section, giving OVC the flexibility to deliver timely and critically-needed assistance to victims of terrorism and mass violence occurring within the United States. It also makes a technical correction to recent legislation that inadvertently reversed the existing exclusion under VOCA of individuals eligible for other Federal compensation under the Omnibus Diplomatic Security and Antiterrorism Act of 1986. Expansion of original Administration proposal.

TITLE VII—INCREASED INFORMATION SHARING FOR CRITICAL INFRASTRUCTURE PROTECTION

[Note: The original Administration proposal did not include this subtitle to expand regional information sharing to facilitate Federal-state-local law enforcement responses to terrorism.]

Sec. 701. Expansion of regional information sharing system to facilitate Federal-State-local law enforcement response related to terrorist attacks. Both the House and Senate bills included this provision to expand the Department of Justice Regional Information Sharing Systems (RISS) Program to facilitate information sharing among Federal, State and local law enforcement agencies to investigate and prosecute terrorist conspiracies and activities and doubles its authorized funding for FY2002 and FY2003. Currently, 5,700 Federal, State and local law enforcement agencies participate in the RISS Program. Not in original Administration proposal.

TITLE VIII—STRENGTHENING THE CRIMINAL LAWS AGAINST TERRORISM

Sec. 801. Terrorist attacks and other acts of violence against mass transportation systems. Both the House and Senate bills included this provision to create a new statute (to be codified at 18 U.S.C. §1993) to make punishable acts of terrorism and other violence against mass transportation vehicles, systems, facilities, employees and passengers; the reporting of false information about such activities; and attempts and conspiracies to commit such offenses. Violations are punishable by a fine and term imprisonment of 20 years; however, the mass transportation vehicle was carrying a passenger at the time of the attack, or if death resulted from the offense, the maximum term of imprisonment is increased to life. Not in original Administration proposal.

Sec. 802. Definition of domestic terrorism. Both the House and Senate bills included this provision to define the term "domestic terrorism" as a counterpart to the current definition of "international terrorism" in 18 U.S.C. §2331. The new definition for "domestic terrorism" is for the limited purpose of providing investigative authorities (i.e., court orders, warrants, etc.) for acts of terrorism within the territorial jurisdiction of the United States. Such offenses are those that are "(1) dangerous to human life and violate the criminal laws of the United States or any state; and (2) appear to be intended (or have the effect)—to intimidate a civilian population; influence government policy intimidation or coercion; or affect government conduct by mass destruction, assassination, or kidnapping (or a threat of)." Same as Administration proposal.

Sec. 803. Prohibition against harboring terrorists. Both the House and Senate bills included this provision to establish a new criminal prohibition against harboring terrorists, similar to the current prohibition in 18 U.S.C. §792 against harboring spies, and makes it an offense when someone harbors or conceals another they know or should have known had engaged in or was about to engage in federal terrorism offenses. Narrower than Administration's proposal except that the final bill removes the Administration's original proposal to make it an offense to harbor someone merely suspected of engaging in terrorism.

Sec. 804. Jurisdiction over crimes committed at U.S. facilities abroad. Both the House and Senate bills included this provision to extend the special maritime and territorial jurisdiction of the United States to cover, with respect to offenses committed by or against a U.S. national, U.S. diplomatic, consular and military missions, like residences used by U.S. personnel assigned to such missions. Based on original Administration proposal.

Sec. 805. Material support for terrorism. Both the House and Senate bills included this provision to amend 18 U.S.C. §2339A, which prohibits providing material support to terrorists, in four respects. First, it adds three terrorism-related offenses to the list of §2339A predicates. Second, it provides that §2339A violations may be prosecuted in any Federal judicial district in which the predicate offense was committed. Third, it clarifies that monetary instruments, like currency and other financial securities, may constitute "material support or resources" for purpose of §2339A. Fourth, it explicitly prohibits providing terrorists with "expert advice or assistance," such as flight training, knowing or intending that it will be used to prepare for or carry out an act of terrorism. Same as original Administration proposal.

Sec. 806. Assets of terrorists organizations. Both the House and Senate bills included this provision to provide that the assets of individuals and organizations engaged in planning or perpetrating acts of terrorism against the United States, as well as the proceeds and instrumentalities of such acts, are subject to civil forfeiture. Same as original Administration proposal.

Sec. 807. Technical clarification relating to provision of material support to terrorism. Both the House and Senate bills included this provision to clarify that the provisions of the Trade Sanctions Reform and Export Enhancement Act of 2000 (title IX of Public Law 106-387) do not limit or otherwise affect the criminal prohibitions against providing material support to terrorists or designated terrorist organizations, 18 U.S.C. §§2339A & 2339B. Same as original Administration proposal.

Sec. 808. Definition of Federal crime of terrorism. Both the House and Senate bills included this provision to update the list of predicate offenses under the current definition of "Federal crime of terrorism," 18 U.S.C. §2332b(g)(5). Narrower than original Administration proposal.

Sec. 809. No statute of limitation for certain terrorism offenses. Both the House and Senate bills included this provision to eliminate the statute of limitations for certain terrorism-related offenses, if the commission of such offense resulted in, or created a foreseeable risk of, death or serious bodily injury to another person. Narrower than original Administration proposal.

Sec. 810. Alternative maximum penalties for terrorism offenses. Both the House and Senate bills included this provision to raise the maximum prison terms to 15 or 20 years or, if death results, life, in the following criminal statutes: 18 U.S.C. §81 (arson within the special maritime and territorial jurisdiction of the United States); 18 U.S.C. §1365 (destruction of an energy facility); 18 U.S.C. §2155(a) (destruction of national-defense materials); 18 U.S.C. §§2339A & 2339B (provision of material support to terrorists and terrorist organizations); 42 U.S.C. §2284 (sabotage of nuclear facilities or fuel); 18 U.S.C. §46506(c) (killings on aircraft); 49 U.S.C. §60123(b) (destruction of interstate gas or hazardous liquid pipeline facility). Narrower than original Administration proposal.

Sec. 811. Penalties for terrorist conspiracies. Both the House and Senate-passed bills included this provision to ensure adequate penalties for certain terrorism-related conspiracies by adding conspiracy provisions to the following criminal statutes: 18 U.S.C. §81 (arson within the special maritime and territorial jurisdiction of the United States); 18 U.S.C. §930(c) (killings in Federal facilities); 18 U.S.C. §1362 (destruction of communication lines, stations, or systems); 18 U.S.C. §1363 (destruction of property within the special maritime and territorial jurisdiction of the United States); 18 U.S.C. §1992 (wrecking trains); 18 U.S.C. §2339A (material support to terrorists); 18 U.S.C. §2340A (torture); 42 U.S.C. §2284 (sabotage of nuclear facilities or fuel); 49 U.S.C. §46504 (interference with flight crew); 49 U.S.C. §46505 (carrying weapons or explosives on aircraft); 49 U.S.C. §60123 (destruction of interstate gas or hazardous liquid pipeline facility). Narrower than original Administration proposal.

Sec. 812. Post-release supervision of terrorists. Both the House and Senate bills included this provision to authorize extended period of supervised release for certain terrorism-related offenses that resulted in, or created a foreseeable risk of, death or serious bodily injury to another person. Narrower than original Administration proposal.

Sec. 813. Inclusion of acts of terrorism as racketeering activity. Both the House and Senate bills included this provision to amend the RICO statute to include certain terrorism-related offenses within the definition of "racketeering activity," thus allowing multiple acts of terrorism to be charged as a pattern of racketeering for RICO purposes. This section expands the ability of prosecutors to prosecute members of established, ongoing terrorist organizations that present the threat of continuity that the RICO statute was designed to permit prosecutors to combat. Narrower than original Administration proposal.

Sec. 814. Deterrence and prevention of cyberterrorism. Both the House and Senate bills included this provision to clarify the criminal statute prohibiting computer hacking, 18 U.S.C. §1030, to cover computers located outside the United States when used in a manner that affects the interstate commerce or communications of this country, update the definition of "loss" to ensure full costs to victims of hacking offenses are counted, clarify the scope of civil liability and eliminate the current mandatory minimum sentence applicable in some cases. Not in original Administration proposal.

Sec. 815. Additional defense to civil actions relating to preserving records in response to Government requests. Both the House and Senate bills included this provision to provide an additional defense under 18 U.S.C. §2707(e)(1) to civil actions relating to preserving records in response to Government requests. Not in original Administration proposal.

Sec. 816. Development and support of cybercrime forensic capabilities. Both the House and Senate bills included this provision to require the Attorney General to establish regional computer forensic laboratories and to support existing computer forensic laboratories to help combat computer crime. Not in original Administration proposal.

Sec. 817. Expansion of the biological weapons statute. The Senate-passed bill included this provision to amend the definition of "for use as a weapon" in the current biological weapons statute, 18 U.S.C. §175, to include all situations in which it can be proven that the defendant had any purpose other than a prophylactic, protective, or peaceful purpose. This section also creates a new criminal statute, 18 U.S.C. §175b, which generally makes it an offense for certain restricted persons, including non-resident foreign nationals of countries that support international terrorism, to possess a listed biological agent or toxin. Finally, this section provides that the Department of Health and Human Services enhance its role in bioterrorism prevention by establishing and enforcing standards and procedures governing the possession, use, and transfer of certain biological agents that have a high national security risk, including safeguards to prevent access to such agents for use in domestic or international terrorism. Modified from original Administration proposal, which did not require the government to establish the mens rea of the defendant to prove the crime of possession of the biological weapon.

TITLE IX—IMPROVED INTELLIGENCE

Sec. 901. Responsibilities of Director of Central Intelligence regarding foreign intelligence collected under the Foreign Intelligence Surveillance Act of 1978. Both the House and Senate bills included this provision to clarify the role of the Director of Central Intelligence ("DCI") with respect to the overall management of collection goals, analysis and dissemination of foreign intelligence gathered pursuant to the Foreign Intelligence Surveillance Act, in order to ensure that FISA is properly and efficiently used for foreign intelligence purposes. It requires the DCI to assist the Attorney General in ensuring that FISA efforts are consistent with constitutional and statutory civil liberties. The DCI will have no operational authority with respect to implementation of FISA, which will continue to reside with the FBI. Not in original Administration proposal.

Sec. 902. Inclusion of international terrorism activities within scope of foreign intelligence under National Security Act of 1947. Both the House and Senate bills included this provision to revise the National Security Act definitions section to include "international terrorism" as a subset of "foreign intelligence." This change will clarify the DCI's responsibility for collecting foreign intelligence related to international terrorism. Not in original Administration proposal.

Sec. 903. Sense of Congress on the establishment and maintenance of intelligence relationships to acquire information on terrorists and terrorist organizations. Both the House and Senate bills included this provision to express the Sense of Congress that the CIA should make efforts to recruit informants to fight terrorism. Not in original Administration proposal.

Sec. 904. Temporary authority to defer submittal to Congress of reports on intelligence and intelligence-related matters. Both the House and Senate bills included this provision to allow the Secretary of Defense, the Attorney General and the DCI to defer the submittal of certain reports to Congress until February 1, 2002. Not in original Administration proposal.

Sec. 905. Disclosure to Director of Central Intelligence of foreign intelligence related information with respect to criminal investigations. Both the House and Senate bills included this provision to create a responsibility for law enforcement agencies to notify the Intelligence Community when a criminal investigation reveals information of intelligence value. Regularizes existing ad hoc notification, and makes clear that constitutional and statutory prohibitions of certain types of information sharing apply. Not in original Administration proposal.

Sec. 906. Foreign Terrorist Asset Tracking Center. Both the House and Senate bills included this provision to regularize the existing Foreign Terrorist Asset Tracking Center by creating an element within the Department of Treasury designed to review all-source intelligence in support of both intelligence and law enforcement efforts to counter terrorist financial support networks. Not in original Administration proposal.

Sec. 907. National Virtual Translation Center. Both the House and Senate bills included this provision to direct the submission of a report on the feasibility of establishing a virtual translation capability, making use of cutting-edge communications technology to link securely translation capabilities on a nationwide basis. Not in original Administration proposal.

Sec. 908. Training of government officials regarding identification and use of foreign intelligence. Both the House and Senate bills included this provision to direct the Attorney General, in consultation with the DCI, to establish a training program for Federal, State and local officials on the recognition and appropriate handling of intelligence information discovered in the normal course of their duties. Not in original Administration proposal.

TITLE X—MISCELLANEOUS

Sec. 1001. Review of the Department of Justice. This provision authorizes the Inspector General of the Department of Justice to designate one official to review information and receive complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department of Justice. Not in original Administration proposal.

Sec. 1002. Sense of Congress. This provision condemns discrimination and acts of violence against Sikh-Americans. Not in original Administration proposal.

Sec. 1003. Definition of "electronic surveillance." This provision authorizes the use of the new computer trespass authority under FISA. Not in original Administration proposal.

Sec. 1004. Venue in money laundering cases. This provision clarifies the judicial districts in which money laundering prosecutions under 18 U.S.C. §§1956 and 1957 may be brought. Not in original Administration proposal.

Sec. 1005. First responders assistance act. This provision authorizes grants to State and local authorities to respond to and prevent acts of terrorism. Not in original Administration proposal.

Sec. 1006. Inadmissibility of aliens engaged in money laundering. This provision makes inadmissible to the United States any alien who a consular officer or the Attorney General knows, or has reason to believe, is involved in a Federal money laundering offense. Not in original Administration proposal.

Sec. 1007. Authorization of funds for DEA police training in South and Central Asia. This provision authorizes money for anti-drug training in the Republic of Turkey, and for increased precursor chemical control efforts in the South and Central Asia region. Not in original Administration proposal.

Sec. 1008. Feasibility study on use of biometric identifier scanning system with access to the FBI integrated automated fingerprint identification system at overseas consular posts and points of entry to the United States. This provision directs the Attorney General to report to Congress on the feasibility of using a biometric identifier (fingerprint) scanning system, with access to the FBI fingerprint database, at consular offices abroad and at points of entry into the United States. Not in original Administration proposal.

Sec. 1009. Study of access. This provision directs the FBI to report to Congress on the feasibility of providing airlines with computer access to the names of suspected terrorists. Not in original Administration proposal.

Sec. 1010. Temporary authority to contract with local and State governments for performance of security functions at United States military installations. This provision provides temporary authority for the Department of Defense to enter contracts for the performance of security functions at any military installation of facility in the United States with a proximately located local or State government. Not in original Administration proposal.

Sec. 1011. Crimes against charitable Americans. This provision amends the Telemarketing and Consumer Fraud and Abuse Prevention Act to require any person engaged in telemarketing for the solicitation of charitable contributions to disclose to the person receiving the call that the purpose of the call is to solicit charitable contributions, and to make such other disclosures as the FTC considers appropriate. Not in original Administration proposal.

Sec. 1012. Limitation on issuance of hazmat licenses. This provision allows the Department of Transportation to obtain background records checks for any individual applying for a license to transport hazardous materials in interstate commerce. Not in original Administration proposal.

Sec. 1013. Expressing the sense of the Senate concerning the provision of funding for bioterrorism preparedness and response. This provision expresses the sense of the Senate that the United States should make a substantial new investment this year toward improving State and local preparedness to respond to potential bioterrorism attacks. Not in original Administration proposal.

Sec. 1014. Grant program for State and local domestic preparedness support. This provision authorizes an appropriated Department of Justice program to provide grants to States to prepare for and respond to terrorist acts including but not limited to events of terrorism involving weapons of mass destruction and biological, nuclear, radiological, incendiary, chemical, and explosive devices. The authorization revises this grant program to provide: (1) additional flexibility to purchase needed equipment; (2) training and technical assistance to State and local first responders; and (3) a more equitable allocation of funds to all States. Not in original Administration proposal.

Sec. 1015. Expansion and reauthorization of the Crime Identification Technology Act for antiterrorism grants to States and localities. This provision adds an additional antiterrorism purpose for grants under the Crime Identification Technology Act, and authorizes grants under that Act through fiscal year 2007. Not in original Administration proposal.

Sec. 1016. Critical infrastructures protection. This provision establishes a National Infrastructure Simulation and Analysis Center (NISAC) to address critical infrastructure protection and continuity through support for activities related to counterterrorism, threat assessment, and risk mitigation. Not in orignal Administration proposal.

Mr. LEAHY After that terrible day of September 11, we began looking at our laws, and what we might do. Unfortunately, at first, rhetoric overcame reality. We had a proposal sent up, and we were asked to pass it within a day or so. Fortunately for the country, and actually ironically beneficial to both the President and the Attorney General who asked for such legislation, we took time to look at it, we took time to read it, and we took time to remove those parts that were unconstitutional and those parts that would have actually hurt liberties of all Americans.

I say that because I think of what Benjamin Franklin was quoted as saying at a time when he literally had his neck on the line, where he would have been hanged if our revolution had failed. He said: A people who would give up their liberty for security deserve neither.

What we have tried to do in this legislation is to balance the liberties we enjoy as Americans and those liberties that have made us the greatest democracy in history but at the same time to enhance our security so we can maintain that democracy and maintain the leadership we have given the rest of the world.

We completed our work 6 weeks after the September 11 attacks. I compare this to what happened after the bombing of the Federal Building in Oklahoma City in 1995. It took a year to complete the legislation after that. We have done this in 6 weeks. But there has been a lot of cooperation. There have been a lot of Senators and a lot of House Members in both parties and dedicated staff who have worked around the clock.

I think of my own staff—and this could be said of many others, including the Presiding Officer's staff and the ranking member's staff—who were forced out of their offices because of the recent scares on Capitol Hill, and they continue to work literally in phone booths and in hallways and from their homes and off laptops and cell phones.

I made a joke in my own hide-away office. To those who have ever watched "The X-Files," there is a group called "the lone gunmen," who are sort of these computer nerds who meet in a small house trailer. I am seeing some puzzled looks around the Senate as I say this. But they have all these wires hanging from the ceiling and laptops and all, and they do great things. That is the way our office looked. But they were working around the clock on this legislation to get something better. There was some unfortunate rhetoric along the way, but again, the reality overcame it. We have a good piece of legislation.

As we look back to when we began discussions with the administration about this bill, there were sound and legitimate concerns on both sides of the Capitol, both sides of the aisle, about the legislation's implication for America's rights and freedoms. There was also a sincere and committed belief that we needed to find a way to give law enforcement authority new tools in fighting terrorism.

This is a whole new world. It is not similar to the days of the cold war where we worried about armies marching against us or air forces flying against us or navies sailing against us. This is not that world. Nobody is going to do that because we are far too powerful. Since the end of the cold war, with the strength of our military, nobody is going to do a frontal attack. But as the Presiding Officer and everyone else knows, a small dedicated group of terrorists, with state-supported efforts, can wreak havoc in an open and democratic Nation such as ours.

Anybody who has visited the sites of these tragedies doesn't need to be told the results. We know our Nation by its very nature will always be vulnerable to these types of attacks. None of us serving in the Senate today will, throughout our service, no matter how long it is, see a day where we are totally free of such terrorist attacks. That is the sad truth. Our children and our grandchildren will face the possibilities of such terrorist attacks because that is the only way the United States can be attacked. But that doesn't mean we are defenseless. It doesn't mean we suddenly surrender.

We have the ability, with our intelligence agencies and our law enforcement, to seek out and stop people before this happens. We are in an open session today, so I won't go into the number of times we have done that. But in the last 10 years, we have had, time and time again, during the former Bush administration, during the Clinton administration, and in the present administration, potential terrorist attacks thwarted. People have either been apprehended or eliminated.

Everybody in America knows our life has changed. Whether the security checks and the changes in our airlines are effective or not, we know they are reality. We know travel is not as easy as it once was. We will be concerned about opening mail. We will worry when we hear the sirens in the night. But we are not going to retreat into fortress America. We are going to remain a beacon of democracy to the rest of the world. Americans don't run and hide. Americans face up, as we have, to adversities, whether they be economic or wars or anything else.

We began this process knowing how we had to protect Americans. It was not that we were intending to see how much we could take out of the administration's proposal, but it was with a determination to find sensible, workable ways to do the same things to protect America the administration wanted but with checks and balances against abuse. We have seen at different times in this Nation's history how good intentions can be abused. We saw it during the McCarthy era.

Following the death of J. Edgar Hoover, we found how much totalitarian control of the FBI hurt so many innocent people without enhancing our security. We saw it during the excesses of the special prosecutor law enacted with good intentions.

We wanted to find checks and balances. We wanted to make sure we could go after terrorism. We wanted to make sure we could go after those who would injure our society, those who would strike at the very democratic principles that ironically make us a target. But we wanted to do it with checks and balances against abuse. That is what we did. In provision after provision, we added those safeguards that were missing from the administration's plan.

By taking the time to read and improve the antiterrorism bill, Congress has done the administration a great favor in correcting the problems that were there. We have used the time wisely. We have produced a far better bill than the administration proposed. Actually, it is a better bill than either this body or the House initially proposed. The total is actually greater than the sum of the parts.

We have done our utmost to protect Americans against abuse of these new law enforcement tools, and there are new law enforcement tools involved. In granting these new powers, the American people but also we, their representatives in Congress, grant the administration our trust that they are not going to be misused. It is a two-way street. We are giving powers to the administration; we will have to extend some trust that they are not going to be misused.

The way we guarantee that is congressional oversight. Congressional oversight is going to be crucial in enforcing this compact. If I might paraphrase former President Reagan: We will entrust but with oversight.

We will do this. The Republican chairman and his ranking member in the House of Representatives intend to have very close oversight. I can assure you that I and our ranking member will have tight oversight in the Senate.

Interestingly enough, the 4-year sunset provision included in this final agreement will be an enforcement mechanism for adequate oversight.

We did not have a sunset provision in the Senate bill. The House included a 5-year provision. The administration wanted even 10 years. We compromised on 4. It makes sense. It makes sense because with everybody knowing there is that sunset provision, everybody knows they are going to have to use these powers carefully and in the best way. If they do that, then they can have extensions. If they don't, they won't. It also enhances our power for oversight.

This is not precisely the bill that Senator HATCH would have written. It is not precisely the bill I would have written, or not precisely the bill the Presiding Officer or others on the floor would have written. But it is a good bill. It is a balanced bill. It is a greatly improved piece of legislation. It is one that sets up the checks and balances necessary in a democratic society that allow us to protect and preserve our security but also protect and preserve our liberties.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, shortly after the September 11 attack on America, the President of the United States asked Congress to pass legislation that would provide our law enforcement and intelligence agencies the tools they needed to wage war on the terrorists in our midst. These tools represent the domestic complement to the weapons our military currently is bringing to bear on the terrorists' associates overseas. At the same time, the President asked that, in crafting these tools, we remain vigilant in protecting the constitutional freedoms of all Americans—certainly of all law-abiding Americans.

After several weeks of negotiations with Chairman LEAHY, the House of Representatives, and the administration, we have developed bipartisan consensus legislation that will accomplish both of these goals. It enhances our ability to find, track, monitor, and prosecute terrorists operating here in the U.S. without in any way undermining civil liberties.

We can never know whether these tools would have prevented the attack on America, but, as the Attorney General has said, it is certain that without these tools we did not stop the vicious acts of last month.

I personally believe that if these tools had been in law—and we have been trying to get them there for years—we would have caught those terrorists. If these tools could help us now to track down the perpetrators—if they will help us in our continued pursuit of terrorists—then we should not hesitate to enact these measures into law. God willing, the legislation we pass today will enhance our abilities to protect and prevent the American people from ever again being violated as we were on September 11.

This legislation truly represents the product of intense, yet bipartisan, negotiations. Senator LEAHY and I carried out a painstaking review of the antiterrorism proposal submitted by the administration. There have been several hearings on this legislation in the Senate—not just this year, but in prior years—on some of the provisions and features that we have in here, including discussions during the enactment of the 1996 Antiterrorism Effective Death Penalty Act, called the Dole-Hatch bill.

We have heard from countless experts and advocates on all sides of this issue in this debate. Of late, we have also worked closely with Chairman SENSENBRENNER in the House, Mr. CONYERS, the ranking member on the House Judiciary Committee, and others in our effort to complete legislation that could receive near unanimous approval and support in the Congress. Although I do not expect every Senator to vote in favor of this legislation, Senator LEAHY and I have worked tirelessly to accommodate every concern. While Members ultimately may differ on some of these proposals, I know we all share the same overriding concern, and that is protecting our country from further harm.

The bill before us, which I hope we will pass today, differs in several respects from the legislation we passed in the Senate 2 weeks ago. These changes result from negotiations with our House counterparts, and some of the changes are certainly not objectionable. For example, we have included language requiring prosecutors to notify Federal courts when they have disclosed grand jury information to other Federal agencies for national security purposes. Also, the bill includes a provision requiring law enforcement to provide detailed reports concerning their use of the FBI's so-called Carnivore computer surveillance system. These changes will properly encourage the law enforcement community to use these tools responsibly.

Unfortunately, not all of the changes are welcome. For instance, our effort to mitigate the unforeseen problems created by a change in the law governing the discipline of Federal prosecutors was rebuffed by the House of

Representatives. As a result, Federal prosecutors will continue to be hampered by the myriad and often contradictory State bar rules, and sometimes very politicized State bar rules. Even more alarming, Federal law enforcement authorities in the State of Oregon will continue to be prohibited from engaging in legitimate undercover activity—even undercover activity designed to infiltrate a terrorist cell. That is ridiculous. Nevertheless, we could not get our House counterparts to resolve that problem.

Another troublesome change concerns the 4-year sunset provision. As my colleagues know, the legislation that passed the Senate 2 weeks ago by a vote of 96-1 did not contain a sunset. This omission was intentional and wise. In my opinion, a sunset will undermine the effectiveness of the tools we are creating here and send the wrong message to the American public that somehow these tools are extraordinary.

One hardly understands the need to sunset legislation that both provides critically necessary tools and protects our civil liberties. Furthermore, as the Attorney General stated, how can we sunset these tools when we know full well that the terrorists will not sunset their evil intentions? I sincerely hope we undertake a thorough review and further extend the legislation once the 4-year period expires. At least, we will have 4 years of effective law enforcement against terrorism that we currently do not have.

Despite these provisions, the legislation before us today deserves unanimous support. The core provisions of the legislation we passed in the Senate 2 weeks ago remain firmly in place. For instance, in the future, our law enforcement and intelligence communities will be able to share information and cooperate fully in protecting our Nation against terrorist attacks.

Our laws relating to electronic surveillance also will be updated. Electronic surveillance conducted under the supervision of a Federal judge happens to be one of the most powerful tools at the disposal of our law enforcement community. We now know that e-mail, cellular telephones, and the Internet have been the principal tools used by terrorists to coordinate their attacks, and our law enforcement and intelligence agencies have been hamstrung by laws that were enacted long before the advent of these technologies. This bill will modernize our laws so our law enforcement agencies can deal with the world as it is, rather than with the world as it existed 20 years ago.

Also, the legislation retains the compromise immigration proposals that I negotiated with Senator LEAHY, Senator KENNEDY, Senator KYL, Senator BROWNBACK, and also Senator FEINSTEIN, who has played a significant role. She and Senator KYL have both played significant roles leading up to this particular bill, and over the last 5 years in particular. We have worked hard to craft language that allows the Attorney General to be proactive, rather than reactive, without sacrificing the civil liberties of noncitizens.

In total, the amendments made by this legislation to the Immigration and Nationality Act reflect, and account for, the complex and often mutating nature of terrorist groups by expanding the class of inadmissible and deportable aliens and providing a workable mechanism by which the Attorney General may take into custody suspected alien terrorists. Further, the legislation breaks down some of the barriers that have in the past prevented the State Department, the Immigration and Naturalization Service, the FBI, and others from effectively communicating with each other. If we are to fight terrorism, we cannot allow terrorists, or those who support terrorists, to enter or to remain in our country.

Finally, the bill provides the administration with powerful tools to attack the financial infrastructure of terrorism. For instance, the legislation expands the President's authority to freeze the assets of terrorists and terrorist organizations and provides for the eventual seizure of such assets. These financial tools will give our Government the ability to choke off the financing that these dangerous organizations need in order to survive.

The legislation provides numerous other tools—too many to mention here—to aid our war against terrorism. Many of these were added at the request of our Senate colleagues, and I commend all of them for their input.

Before I yield the floor, I must take a moment to acknowledge the hard work by my staff, the staff of Senator LEAHY, and the representatives of the administration, from the White House and the Justice Department and elsewhere, who were involved in the negotiation of this bill. These people have engaged in discussions literally around the clock over the 6 weeks to produce this legislation. So I thank everybody who has worked on this legislation.

This is a major anticrime, antiterrorism bill. It is probably the most important bill we will enact this year, certainly with regard to national security and terrorism. I thank everybody involved, and I will make further remarks about that later in the debate.

With that, I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Madam President, it is my hope that today as we pass this antiterrorism legislation and as we will in future days take action on issues of resources to fight antiterrorism and changes in organizational structure, we will be making as significant a national statement about our will and determination to eliminate the scourge of global terrorism as previous generations did about other scourges that afflicted our country.

It was not that long ago that America was beset by the scourge of organized crime. Many of our communities had been seriously invaded by these insidious influences of organized crime. People, many of whom occupy the chairs that we now occupy in this very Chamber, decided a half century or more ago that was intolerable and we would take the necessary steps to recapture the essential values of our country.

I think it is fair to say we live in a much safer and more secure America because of those efforts. I hope that in years in the future those who occupy this Chamber will look back with a similar belief that the actions we are taking now have had a similar effect in terms of making this a more secure, not just America but world for our children and grandchildren.

With that hope, I wish to talk about a few of the provisions of this legislation that relate directly to America's intelligence community and the role it will play in securing that future.

First, a bit of history. For most of America's history, we have been extremely uncomfortable with the idea of clandestine intelligence. It ran contrary to our basic spirit of national openness. While the British have had a well-developed intelligence system since the Napoleonic wars, our first adventure in this field really is a product of the Second World War, and as soon as the war was over, the military intelligence services were essentially collapsed.

Two years later, President Truman recognized that with the advent of the Soviet Union and the development of what we came to know as the Iron Curtain that separated the Soviet Union from the free world, we were going to have to have some capability to understand what this large adversary was about and therefore prepare ourselves. So in 1947 the National Security Act was adopted which created the Central Intelligence Agency and from that the other intelligence agencies which now constitute America's intelligence community.

For 40 years that intelligence community was focused on one target: the Soviet Union and its Warsaw Pact allies. We knew that community. The United States had been dealing with Russia since even before John Quincy Adams was our Ambassador in St. Petersburg. It was a homogenous enemy. Most of the countries spoke Russian, and therefore if we had command of that language, we could understand what most of the Warsaw Pact nations were saying. It was also an old style symmetrical enemy: We were matching tanks for tanks, nukes for nukes.

With the fall of the Berlin Wall, the world changed in terms of intelligence requirements. Suddenly, instead of one enemy, we had dozens of enemies. Suddenly, instead of having command of one language which made us linguistically competent, there were scores of languages we had to learn to speak. In

Afghanistan alone, there are more than a half dozen languages with which one must have some familiarity in order to understand what is being said there. And instead of symmetrical relationships, we now have small groups of a dozen or a hundred or a thousand or so against a nation the size of the United States of America. So our intelligence community has been challenged to respond to this new reality. This legislation is going to accelerate that response.

Let me focus, in my limited time, on three areas within this legislation that I think will be significantly beneficial.

The first goes to the reality that we have had, in large part, out of this history of unease with dealing with clandestine information, an orientation to treat terrorist activities as crimes and put up yellow tape, secure the crime scene, hold the information very close because we did not want to have it infected so that the evidence could not be used at a subsequent trial that would lead to the conviction of the perpetrator. In the course of that, we also shut off the ability to share information which might allow us to anticipate the future actions of those same perpetrators and interdict an act of terrorism before it had occurred.

We take some significant steps to overcome that orientation by the provisions contained in this legislation which will require the sharing of criminal justice information with intelligence agencies. I underscore the word "require" because even as recently as today's Washington Post, there is an article describing the legislation which uses the term "the authority to share," as if this were a permissive requirement.

In fact, the legislation very explicitly makes it mandatory. I refer to page 308 beginning at line 9 where it states that the Attorney General or the head of any other Department or Agency of the Federal Government with law enforcement responsibilities shall—shall—expeditiously disclose to the Director of Central Intelligence pursuant to guidelines developed foreign intelligence acquired by an element of the Department of Justice or any element of such Department or Agency, as the case may be, in the course of a criminal investigation.

We are closing that gap which has in the past been a major source of limitation and frustration to our ability to predict and interdict future actions.

Second, we are dealing with the issue of the empowerment of the Director of Central Intelligence. We tend to think of the CIA as being the lead agency for our intelligence community. In fact, that is not correct. If one looks at an organizational chart, across the top is the Director of Central Intelligence. Under the Director of Central Intelligence is a series of agencies, of which the CIA is one, which have operational responsibility.

If one looks at that chart, one assumes the Director of Central Intelligence is the head coach, the leader with the ability to command and control the intelligence community. In fact, because of other authorities, including budget authority and personnel authorities and some culture of individuality by agencies, the Director of Central Intelligence has not been fully empowered.

We take a step in this legislation towards giving the Director of Central Intelligence greater authority and in a very significant area. We have a limited capability to eavesdrop on the communication of potential adversaries, including terrorists. Under the current structure, it is primarily the responsibility of the Federal Bureau of Investigation, which actually operates and targets our electronic surveillance, as to which target will be listened to first if we cannot listen to everybody because we do not have, for instance, enough people who can understand the exotic language in which the communication is being spoken.

This legislation will establish the fact it is the Director of Central Intelligence who will decide what the strategic priorities for the use of our electronic surveillance will be. So if the Director of Central Intelligence is aware we face a terrorist attack from a specific terrorist organization which speaks a specific language, those communications will be given the priority for purposes of how we will use our available electronic surveillance capability.

The Director of Central Intelligence will then also, at the back end of that process, have the primary responsibility for determining how to disseminate that information. The nightmare that exists, and will exist until we complete a full review of what happened on September 11, is we are going to find someplace a tape of a conversation we secured which will disclose what would have been key information as to what was being prepared, what plot was being matured which resulted in the terror of September 11.

These provisions are intended to prioritize, on the front end, what we will gather information against and, on the back end, who will be first in line to get the information that has come from that surveillance.

A third provision goes to the criticism that the intelligence community has become risk adverse; that we have been reticent to take on the hardest targets because they are hard, because they may result in failure and nonaccomplishment of the mission. As President Kennedy said as we started our space program, we start this not because it is easy but because it is hard and it will challenge us to our fullest.

One of the areas in which we have become risk adverse has been the area of hiring foreign nationals to do work which it is very difficult for Americans to do, not because we are not smart, capable people, but if we are going to hire someone or secure the services of someone who can get close to an ominous figure such as Osama bin Laden, frankly, it is probably somebody who is pretty similar to bin Laden. It is someone who can gain his confidence. That may well mean he has been an associate of bin Laden in the past, has engaged in some of the activities we so abhor.

Today there is a sense within the intelligence community we should not hire people who have that kind of background because they are potentially unreliable but also because they bring a dirty background.

This legislation, through a sense-of-the-Congress statement, reverses that and says our priority goal in employing persons to assist in our antiterrorism activity should be to acquire services of persons who can be of greatest assistance to us in determining the plans and intentions of the terrorists, even if it means we might have to hire someone with whom we would not personally like to have a social or other relationship.

That is a statement of our commitment to this intelligence community; that we, the Congress, are prepared to back them up when they take some of these high-risk undertakings and that we will understand there is the risk of failure but it is better to risk failure than to be cowered by the unwillingness to engage in important but high-risk ventures.

So those are three illustrative provisions which are in the intelligence section of this legislation, which I think have the potential of the same impact on our capacity to rid the world of the scourge of terrorism as similar actions have so contributed to our ability to reduce the influence of organized crime within this Nation.

I urge the adoption of this conference report.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. Madam President, I yield 5 minutes to the Senator from Kansas.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Madam President, I thank my colleague, Senator HATCH of Utah, for giving me time to speak in support of the bill. I want to particularly direct attention to the immigration provisions in the bill.

Last month, our Nation was attacked by extremists who hoped to undermine our way of life and the liberties we enjoy. These individuals and the groups they represent want our country to recoil in terror and capitulate to fear. This we will not do.

We have before us today legislation that stands firm before those who mean us harm. This antiterrorism package, the product of an earnest bipartisan effort, is an intelligent and thorough response to the immediate security needs of our Nation. I commend in particular the immigration provisions of this legislation, which will strengthen our immigration laws to better combat terrorism.

My heartfelt gratitude is to my colleagues on the Immigration Subcommittee and to the committee's leadership—Senator HATCH, Senator LEAHY, and others—for their dedication and diligence in crafting what I think is fine legislation.

This antiterrorist package will enhance the ability of our consuls overseas and our immigration officers at home to intercept and remove both alien terrorists and those who support them. This is a daunting task.

We had a hearing last week on trying to intercept people coming into this country who mean us harm, and it is difficult in the sense we have nearly 350 million people a year, non-U.S. citizens, who enter this country, and we are looking for those few who mean us harm. This is a difficult task. This legislation helps to make it easier. We are looking for a needle in a haystack, and this legislation helps us in finding that or gives us a bigger magnet to be able to find it.

This legislation will capture not only those individuals who commit acts of terror but also those who enhance, enable, and finance them. It does so through several forceful changes to our current immigration laws. Among those changes is an expanded definition of terrorism, one that encompasses not only the acts of terrorism but the network of terrorism.

This legislation will also permit the Attorney General to promptly take into custody and detain those aliens who pose a threat to the safety or security of this Nation. At the same time, it will provide the Secretary of State with better information and better tools to identify terrorists and to deny them access to our country.

Perhaps most important of all, this legislation will improve the flow of information between the Immigration and Naturalization Service, the Department of State, and the law enforcement and intelligence communities. This is important. What we have is several stovepipes of information, and we need to be able to get those collected to be able to stop the terrorists before they enter our land.

This increased flow of information will allow those agencies tasked with protecting our borders to better coordinate and thereby thwart any terrorist seeking to reach our shores. This is not to say this legislation is unmindful of innocent visitors or the lawful permanent residents of our country. To the contrary. These immigration provisions contain appropriate safeguards to protect the liberties of persons whom we want in this country.

I am pleased to report this legislation is carefully crafted to combat terrorism without compromising the values or the economy of the United States or the values that guide our immigration laws. This legislation represents a profound and essential improvement in our immigration laws. We need these changes if our immigration laws are to be an effective defense against the threat of terrorism we face today.

I urge my colleagues to support the legislation and note as well we are continuing to refine further other potential areas where we can make changes in our immigration laws to better be able to catch those who seek to enter our country to do us harm. Senator KENNEDY and I are working on bipartisan legislation to do just that. We hope to introduce this next week.

I appreciate the opportunity to address my colleagues on this important legislation. I reserve the remainder of our time, and I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, I yield myself such time as I may need.

I see the Senator from Wisconsin, so I am only going to take 2 or 3 minutes at this point.

A number of Senators have asked some of the areas where this changes. We had a separate, bipartisan, bicameral negotiation, and we shaped and changed the legislation as originally proposed by the Attorney General and the administration. I will speak at greater length as we go on.

We improved security on the northern border, the 4,000-mile wonderful border between our country and Canada, another democratic nation. The State of the Presiding Officer borders Canada, as does mine. It is just a short drive from the Canadian border. Many members of my wife's family came from Canada. We have always had historic and economic ties with Canada. Partly because we have taken so much for granted, we have also shortchanged this relationship. We should look at the border for our sake and for the sake of Canada. We have greatly improved security on the northern border by adding better technology, more Customs and INS agents. That helps.

We added something the administration did not include—money laundering. I learned as a prosecutor—and most Members know this—if you want to learn something, follow the money. If you want to stop terrorism, one way is to cut off the money supply.

Third, we have added programs to enhance information sharing in coordination with State and local law enforcement, grants for local governments to respond to bioterrorism, to increase payments to families of fallen firefighters, police officers, and other public safety officers. That is important.

Cooperation is necessary. The mayor of New York City, Mayor Giuliani, called me saying the police commissioner has justifiable concerns about the previous lack of cooperation from the Federal Government in their own antiterrorism efforts, although New York City has one of the best antiterrorist units in the country. The mayor of Baltimore has called, as have other mayors.

I ask unanimous consent to have printed in the RECORD the Washington Post op-ed piece by Robert D. Novak in today's paper entitled "Same Old FBI."

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SAME OLD FBI

Behind the facade of cooperation following the Sept. 11 attacks, less than amicable relations between New York Mayor Rudolph Giuliani and the FBI have further deteriorated. According to New York City sources, the mayor has engaged in more than one shouting match with FBI Assistant Director Barry Mawn.

It's the same old problem because it's the same old FBI. Newly appointed, much acclaimed Director Robert Mueller makes little difference. The bureau refuses to share information with local police agencies. It won't permit security clearances for high local officials. Law enforcement officers around the country say that attitude lent itself to catastrophe on Sept. 11 and could permit further disasters.

Last Friday in Washington, Mueller—amiable and agreeable—sat down with big city police chiefs and promised things will get better. The chiefs doubt whether Mueller or Tom Ridge, the new homeland security director, can change the bureau's culture, described to me by one police chief as "elitist and arrogant." Efforts to enlist members of Congress into pressing for reform find politicians awed by the FBI mystique.

The FBI's big national security section in New York City long has grappled with the New York Police Department. "The FBI's attitude has been that if you need to know, we'll tell you," one New York police source told me. That "need" never occurs, with the FBI adamant against any local anti-terrorism activity. The locals, in turn, complain about the feds failing to follow important leads.

Giuliani is not venting his outrage in this time of crisis, but sources report a high private decibel level by the mayor. The complaint to Mawn is that the NYPD is out of the loop, its senior officers not even granted security clearances.

Such complaints are common across the country, but only a few police chiefs speak publicly—notably Edward Norris of Baltimore (who complained in congressional testimony), Michael Chitwood of Portland, Maine, and Dan Oates of Ann Arbor, Mich.

Chitwood's experience is most bizarre. He was infuriated to learn that the FBI knew of a visit to Portland by two Sept. 11 hijackers but did not inform him. When his police pursued a witness of that visit, the FBI threatened to arrest the chief. "I ignored them," Chitwood told me. Has cooperation with the bureau improved? "Not a bit," he said. Only Tuesday he learned from reading his local newspaper about a plane under federal surveillance parked at the Portland airport for seven weeks.

Oates is familiar with the FBI, having tried to work with the feds during 21 years with the NYPD before retiring this year to go to Ann Arbor. As a deputy chief who was commanding officer of NYPD intelligence, he describes the FBI as "obsessed with turf."

Closing doors to police officers particularly infuriates Oates. "The security clearance issue is a tired old excuse that allows the FBI not to share," he told me. "They should hand out 10,000 security clearances to cops around the country." Oates and other police chiefs believe Sept. 11 might have been averted had the FBI alerted local police agencies about a Minnesota flight school's report of an Arab who wanted instructions for steering a big jet but not for landing or taking off.

Police chiefs would open the FBI to the same probing of decisions and actions that they routinely perform after the fact. They also would like the same rules for the bureau that govern most of the nation's police departments. In the FBI, nobody takes the fall for blundering.

A promise that things will change in the FBI was implicit in Director Mueller's remarks to city police chiefs last Friday. Philadelphia Police Commissioner John Timoney, another NYPD veteran who is more cautious in his criticism of the feds than his former colleague Oates, sounded skeptical after the meeting. "I'm hopeful," he told me, but he would make no predictions.

What he hopes for is the safety of the American people. The police chiefs of America want a top-to-bottom cleaning of the FBI that will require leadership from the Oval Office. If George W. Bush doubts the urgency, he should talk to Rudy Giuliani.

Mr. LEAHY. We have to dramatically increase that cooperation or stop the noncooperation and start cooperating.

We have added humanitarian relief to immigrant victims of the September 11 terrorist attacks. A lot of immigrants became victims of that attack. They suddenly became orphans or were spouses of people killed.

We added help to the FBI to hire translators. I shudder to think how much information was available before September 11 that was never translated that might have prevented this.

We have added more comprehensive victims assistance; measures to fight cyber-crime; measures to fight terrorism against mass transportation systems; important measures to use technology to make our borders more secure.

Last, Madam President, and I cannot emphasize this enough, the Senate should never give a blank check to our law enforcement or to any President or Attorney General of either party. We have to protect the liberties of our people. Who watches the watchers? We watch.

I said earlier, as Benjamin Franklin once said, a nation that would trade its liberties for security deserves neither.

We can have our security and we can protect our liberties but only if we have adequate checks and balances. People who are professional law enforcement say give us the checks and balances. We give enormous power to Federal, State, and local law enforcement, but with that there have to be checks and balances. We have all seen times where if law enforcement is unchecked, innocent people can be hurt.

I was a prosecutor for 8 years, and I know we have to have checks and balances. We have done that. You cannot simply have a case and say: Do this, we will set aside this pesky Constitution for the moment.

We cannot do that. We built in checks and balances that were not in the original proposal. Ultimately, that will be the best thing for the country.

We will give law enforcement translators, tools, computers, and other things necessary to help them. We stand united as a nation. We know the only way to protect ourselves is to stop the terrorists before they strike. Going to the funerals after the strike is too late. We will do that, but we will do it protecting the foundations of our Constitution and freedom which made us such a great democracy in the first place.

None of us have any idea how long we will be in the Senate. I hope my colleagues are willing to stay here as long as they can. When I leave the Senate, as I will, I want to leave knowing I have done my best to protect our freedoms. I have said over and over again, the Senate is the conscience of the Nation. As much as any piece of legislation, this has to reflect our conscience.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Madam President, I have asked for this time to speak about the antiterrorism bill, H.R. 3162. As we address this bill, of course, we are especially mindful of the terrible events of September 11 and beyond, which led to this bill's proposal and its quick consideration in the Congress.

This has been a tragic time in our country. Before I discuss this bill, let me first pause to remember, through one small story, how September 11 has irrevocably changed so many lives. In a letter to the Washington Post recently, a man, as he went jogging near the Pentagon, came across the makeshift memorial built for those who lost their lives. He slowed to a walk as he took in the sight before him, the red, white, and blue flowers covering the structure. Off to the side, was a smaller memorial with a card that read: Happy birthday, Mommy. Although you died and are no longer with me, I feel as if I still have you in my life. I think about you every day.

After reading the card, the man felt as if he were "drowning in the names of dead mothers, fathers, sons, and daughters." The author of this letter shared a moment in his own life that so many of us have had, the moment where televised pictures of the destruction are made painfully real to us. You read a card, see the anguished face of a loved one, and then, suddenly, we feel the enormity of what has happened to so many American families and to all of us as a people.

We also had our initial reactions to the attack. My first and most powerful emotion was a solemn resolve to stop these terrorists. That remains my principal reaction to these events. But I also quickly realized, as many did, that two cautions were necessary. I raised them on the Senate floor the day after the attacks.

The first caution was that we must continue to respect our Constitution and protect our civil liberties in the wake of the attacks.

As the chairman of the Constitution subcommittee of the Judiciary Committee I recognize fully that this is a different world, with different technologies, different issues, and different threats.

Yet we must examine every item that is proposed in response to these events to be sure we are not rewarding these terrorists and weakening ourselves by giving up the cherished freedoms that they seek to destroy.

The second caution I issued was a warning against the mistreatment of Arab Americans, Muslim Americans, South Asians, or others in this country. Already, one day after the attacks, we were hearing news reports that misguided anger against people of these backgrounds had led to harassment, violence, and even death.

I suppose I was reacting instinctively to the unfolding events in the spirit of the Irish statesman John Philpot Curran, who said:

The condition upon which God hath given liberty to man is eternal vigilance.

During those first few hours after the attacks, I kept remembering a sentence from a case I had studied in law school. Not surprisingly, I didn't remember which case it was, who wrote the opinion, or what it was about, but I did remember these words:

While the Constitution protects against invasions of individual rights, it is not a suicide pact.

I took these words as a challenge to my concerns about civil liberties at such a momentous time in our history; that we must be careful to not take civil liberties so literally that we allow ourselves to be destroyed.

But upon reviewing the case itself, Kennedy v. Mendoza-Martinez, I found that Justice Arthur Goldberg had made this statement but then ruled in favor of the civil liberties position in the case, which was about draft evasion. He elaborated:

It is fundamental that the great powers of Congress to conduct war and to regulate the Nation's foreign relations are subject to the constitutional requirements of due process. The imperative necessity for safeguarding these rights to procedural due process under the gravest of emergencies has existed throughout our constitutional history, for it is then, under the pressing exigencies of crisis, that there is the greatest temptation to dispense with fundamental constitutional guarantees which, it is feared, will inhibit governmental action.

The Justice continued:

The Constitution of the United States is a law for rulers and people, equally in war and peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances . . . In no other way can we transmit to posterity unimpaired the blessings of liberty, consecrated by the sacrifices of the Revolution.

I have approached the events of the past month and my role in proposing and reviewing legislation relating to it in this spirit. I believe we must, we must, redouble our vigilance. We must redouble our vigilance to ensure our security and to prevent further acts of terror. But we must also redouble our vigilance to preserve our values and the basic rights that make us who we are.

The Founders who wrote our Constitution and Bill of Rights exercised that vigilance even though they had recently fought and won the Revolutionary War. They did not live in comfortable and easy times of hypothetical

enemies. They wrote a Constitution of limited powers and an explicit Bill of Rights to protect liberty in times of war, as well as in times of peace.

Of course, there have been periods in our nation's history when civil liberties have taken a back seat to what appeared at the time to be the legitimate exigencies of war. Our national consciousness still bears the stain and the scars of those events: The Alien and Sedition Acts, the suspension of habeas corpus during the Civil War, the internment of Japanese-Americans, German-Americans, and Italian-Americans during World War II, the blacklisting of supposed communist sympathizers during the McCarthy era, and the surveillance and harassment of antiwar protesters, including Dr. Martin Luther King Jr., during the Vietnam War. We must not allow these pieces of our past to become prologue.

Even in our great land, wartime has sometimes brought us the greatest tests of our Bill of Rights. For example, during the Civil War, the Government arrested some 13,000 civilians, implementing a system akin to martial law. President Lincoln issued a proclamation ordering the arrest and military trial of any persons "discouraging volunteer enlistments, or resisting militia drafts." Wisconsin provided one of the first challenges of this order. Draft protests rose up in Milwaukee and Sheboygan. And an anti-draft riot broke out among Germans and Luxembourgers in Port Washington, WI. When the government arrested one of the leaders of the riot, his attorney sought a writ of habeas corpus. His military captors said that the President had abolished the writ. The Wisconsin Supreme Court was among the first to rule that the President had exceeded his authority.

In 1917, the Postmaster General revoked the mailing privileges of the newspaper the Milwaukee Leader because he felt that some of its articles impeded the war effort and the draft. Articles called the President an aristocrat and called the draft oppressive. Over dissents by Justices Brandeis and Holmes, the Supreme Court upheld the action.

We all know during World War II, President Roosevelt signed orders to incarcerate more than 110,000 people of Japanese origin, as well as some roughly 11,000 of German origin and 3,000 of Italian origin.

Earlier this year, I introduced legislation to set up a commission to review the wartime treatment of Germans, Italians, and other Europeans during that period. That bill came out of heartfelt meetings in which constituents told me their stories. They were German-Americans, who came to me with some trepidation. They had waited 60 years to raise the issue with a member of Congress. They did not want compensation. But they had seen the Government's commission on the wartime internment of people of Japanese origin, and they wanted their story to be told, and an official acknowledgment as well with regard to what had happened to them. I hope, that we will move to pass this important legislation early next year. We must deal with our nation's past, even as we move to ensure our nation's future.

(Mrs. STABENOW assumed the chair.)

Mr. FEINGOLD. Now some may say, indeed we may hope, that we have come a long way since those days of infringements on civil liberties. But there is ample reason for concern. And I have been troubled in the past 6 weeks by the potential loss of commitment in the Congress and the country to traditional civil liberties.

As it seeks to combat terrorism, the Justice Department is making extraordinary use of its power to arrest and detain individuals, jailing hundreds of people on immigration violations and arresting more than a dozen "material witnesses" not charged with any crime. Although the Government has used these authorities before, it has not done so on such a broad scale. Judging from Government announcements, the Government has not brought any criminal charges related to the attacks with regard to the overwhelming majority of these detainees.

For example, the FBI arrested as a material witness the San Antonio radiologist Albader Al-Hazmi, who has a name like two of the hijackers, and who tried to book a flight to San Diego for a medical conference. According to his lawyer, the Government held Al-Hazmi incommunicado after his arrest, and it took 6 days for lawyers to get access to him. After the FBI released him, his lawyer said:

> This is a good lesson about how frail our processes are. It's how we treat people in difficult times like these that is the true test of the democracy and civil liberties that we brag so much about throughout the world.

I agree with those statements.

Now, it so happens—and I know the Presiding Officer is aware of that because she has been very helpful on this issue—that since early 1999, I have been working on another bill that is poignantly relevant to recent events: legislation to prohibit racial profiling, especially the practice of targeting pedestrians or drivers for stops and searches based on the color of their skin. Before September 11, people spoke of the issue mostly in the context of African-Americans and Latino-Americans who had been profiled. But after September 11, the issue has taken on a new context and a new urgency.

Even as America addresses the demanding security challenges before us, we must strive mightily also to guard our values and basic rights. We must guard against racism and ethnic discrimination against people of Arab and South Asian origin and those who are Muslim.

We who do not have Arabic names or do not wear turbans or headscarves may not feel the weight of these times as much as Americans from the Middle East and South Asia do. But as the great jurist Learned Hand said in a speech in New York's Central Park during World War II:

> The spirit of liberty is the spirit which seeks to understand the minds of other men and women; the spirit of liberty is the spirit which weighs their interests alongside its own without bias. . . .

Was it not at least partially bias, however, when passengers on a Northwest Airlines flight in Minneapolis a month ago insisted that Northwest remove from the plane three Arab men who had cleared security?

Of course, given the enormous anxiety and fears generated by the events of September 11, it would not have been difficult to anticipate some of these reactions, both by our government and some of our people. Some have said rather cavalierly that in these difficult times we must accept some reduction in our civil liberties in order to be secure.

Of course, there is no doubt that if we lived in a police state, it would be easier to catch terrorists. If we lived in a country that allowed the police to search your home at any time for any reason; if we lived in a country that allowed the government to open your mail, eavesdrop on your phone conversations, or intercept your email communications; if we lived in a country that allowed the government to hold people in jail indefinitely based on what they write or think, or based on mere suspicion that they are up to no good, then the government would no doubt discover and arrest more terrorists.

But that probably would not be a country in which we would want to live. And that would not be a country for which we could, in good conscience, ask our young people to fight and die. In short, that would not be America.

Preserving our freedom is one of the main reasons we are now engaged in this new war on terrorism. We will lose that war without firing a shot if we sacrifice the liberties of the American people.

That is why I found the antiterrorism bill originally proposed by Attorney General Ashcroft and President Bush to be troubling.

The administration's proposed bill contained vast new powers for law enforcement, some seemingly drafted in haste and others that came from the FBI's wish list that Congress has rejected in the past. You may remember that the Attorney General announced his intention to introduce a bill shortly after the September 11 attacks. He provided the text of the bill the following Wednesday, and urged Congress to enact it by the end of the week. That was plainly impossible, but the pressure to move on this bill quickly, without deliberation and debate, has been relentless ever since.

It is one thing to shortcut the legislative process in order to get Federal financial aid to the cities hit by terrorism. We did that, and no one complained that we moved too quickly. It is quite another to press for the enactment of sweeping new powers for law enforcement that directly affect the civil liberties of the American people without due deliberation by the peoples' elected representatives.

Fortunately, cooler heads prevailed at least to some extent, and while this bill has been on a fast track, there has been time to make some changes and reach agreement on a bill that is less objectionable than the bill that the administration originally proposed.

As I will discuss in a moment, I have concluded that this bill still does not strike the right balance between empowering law enforcement and protecting civil liberties. But that does not mean that I oppose everything in the bill. By no means. Indeed many of its provisions are entirely reasonable, and I hope they will help law enforcement more effectively counter the threat of terrorism.

For example, it is entirely appropriate that with a warrant the FBI be able to seize voice mail messages as well as tap a phone. It is also reasonable, even necessary, to update the federal criminal offense relating to possession and use of biological weapons. It made sense to make sure that phone conversations carried over cables would not have more protection from surveillance than conversations carried over phone lines. And it made sense to stiffen penalties and lengthen or eliminate statutes of limitation for certain terrorist crimes.

There are other non-controversial provisions in the bill that I support—those to assist the victims of crime, to streamline the application process for public safety officers benefits and increase those benefits, to provide more funds to strengthen immigration controls at our Northern borders—something that the Presiding Officer and I understand—to expedite the hiring of translators at the FBI, and many other such provisions.

In the end, however, my focus on this bill, as Chair of the Constitution Subcommittee of the Judiciary Committee in the Senate, was on those provisions that implicate our constitutional freedoms. And it was in reviewing those provisions that I came to feel that the administration's demand for haste was inappropriate; indeed, it was dangerous. Our process in the Senate, as truncated as it was, did lead to the elimination or significant rewriting of a number of audacious proposals that I and many other members found objectionable.

For example, the original administration proposal contained a provision that would have allowed the use in U.S. criminal proceedings against U.S. citizens of information obtained by foreign law enforcement agencies in wiretaps that would be illegal in this country. In other words, evidence obtained in an unconstitutional search overseas was to be allowed in a U.S. court.

Another provision would have broadened the criminal forfeiture laws to permit—prior to conviction—the freezing of assets entirely unrelated to an alleged crime. The Justice Department has wanted this authority for years, and Congress has never been willing to give it. For one thing, it touches on the right to counsel, since assets that are frozen cannot be used to pay a lawyer. The courts have almost uniformly rejected efforts to restrain assets before conviction unless they are assets gained in the alleged criminal enterprise. This proposal, in my view, was simply an effort on the part of the Department to take advantage of the emergency situation and get something that they've wanted to get for a long time.

As I have indicated, the foreign wiretap and criminal forfeiture provisions were dropped from the bill that we considered in the Senate. Other provisions were rewritten based on objections that I and others raised about them. For example, the original bill contained sweeping permission for the Attorney General to get copies of educational records without a court order. The final bill requires a court order and a certification by the Attorney General that he has reason to believe that the records contain information that is relevant to an investigation of terrorism.

So the bill before us is certainly improved from the bill that the administration sent to us on September 19, and wanted us to pass on September 21. But again, in my judgement, it does not strike the right balance between empowering law enforcement and protecting constitutional freedoms. Let me take a moment to discuss some of the shortcomings of the bill.

First, the bill contains some very significant changes in criminal procedure that will apply to every federal criminal investigation in this country, not just those involving terrorism. One provision would greatly expand the circumstances in which law enforcement agencies can search homes and offices without notifying the owner prior to the search. The longstanding practice under the fourth amendment of serving a warrant prior to executing a search could be easily avoided in virtually every case, because the government would simply have to show that it had "reasonable cause to believe" that providing notice 'may' seriously jeopardize an investigation." This is a significant infringement on personal liberty.

Notice is a key element of fourth amendment protections. It allows a person to point out mistakes in a warrant and to make sure that a search is limited to the terms of a warrant. Just think about the possibility of the police showing up at your door with a warrant to search your house. You look at the warrant and say, "yes, that's my address, but the name on the warrant isn't me." And the police realize a mistake has been made and go away. If you're not home, and the police have received permission to do a "sneak and peek" search, they can come in your house, look around, and leave, and may never have to tell you that ever happened.

That bothers me. I bet it bothers most Americans.

Another very troubling provision has to do with the effort to combat computer crime. I want the effort to stop computer crime. The bill allows law enforcement to monitor a computer with the permission of its owner or operator, without the need to get a warrant or show probable cause.

I want to tell you, Madam President, I have been at pains to point out things I can support in this bill. I think that power is fine in a case of a so-called denial of service attack. What is that? That is plain old computer hacking. You bet. We need to be able to get at that kind of crime.

Computer owners should be able to give the police permission to monitor communications coming from what amounts to a trespasser on the computer, a real trespasser.

But we tried to point out as calmly and as constructively as possible on the floor that, as drafted in this bill, the provision might permit an employer to give permission to the police to monitor the e-mails of an employee who has used her computer at work to shop for Christmas gifts. She violated the rules of her employer regarding personal use of the computer. Or someone who uses a computer at a library or at a school and happens to go to a gambling or pornography site in violation of the Internet use policies of the library or the university might also be subjected to Government surveillance—without probable cause and without any time limit at all. With this one provision, fourth amendment protections are potentially eliminated for a broad spectrum of electronic communications.

I am also very troubled by the broad expansion of Government power under the Foreign Intelligence Surveillance Act, known as FISA. When Congress passed FISA in 1978, it granted to the executive branch the power to conduct surveillance in foreign intelligence investigations without having to meet the rigorous probable cause standard under the fourth amendment that is required for criminal investigations. There is a lower threshold for obtaining a wiretap order from the FISA court because the FBI is not investigating a crime, it is investigating foreign intelligence activities. But the law currently requires that intelligence gathering be the primary purpose of the investigation in order for this much lower standard to apply.

The bill changes that requirement. The Government now will only have to show that intelligence is a "significant purpose" of the investigation. So even if the primary purpose is a criminal investigation, the heightened protections of the fourth amendment will not apply.

It seems obvious that with this lower standard, the FBI will be able to try to

use FISA as much as it can. And, of course, with terrorism investigations, that won't be difficult because the terrorists are apparently sponsored or at least supported by foreign governments. So this means the fourth amendment rights will be significantly curtailed in many investigations of terrorist acts.

The significance of the breakdown of the distinction between intelligence and criminal investigations becomes apparent when you see other expansions of Government power under FISA in this bill.

Another provision that troubles me a lot is one that permits the Government, under FISA, to compel the production of records from any business regarding any person if that information is sought in connection with an investigation of terrorism or espionage.

I want to be clear here, as well, we are not talking about travel records directly pertaining to a terrorist suspect, which we can all see obviously can be highly relevant to an investigation of a terrorist plot. FISA already gives the FBI the power to get airline, train, hotel, car rental, and other records of a suspect.

But this bill does much more. Under this bill, the Government can compel the disclosure of the personal records of anyone—perhaps someone who worked with, or lived next door to, or went to school with, or sat on an airplane with, or had been seen in the company of, or whose phone number was called by—the target of the investigation.

Under this new provision, all business records can be compelled, including those containing sensitive personal information, such as medical records from hospitals or doctors, or educational records, or records of what books somebody has taken out from the library. We are not talking about terrorist suspects, we are talking about people who just may have come into some kind of casual contact with the person in that situation. This is an enormous expansion of authority under a law that provides only minimal judicial supervision.

Under this provision, the Government can apparently go on a fishing expedition and collect information on virtually anyone. All it has to allege, in order to get an order for these records from the court, is that the information is sought for an investigation of international terrorism or clandestine intelligence gathering. That is it. They just have to say that. On that minimal showing, in an ex parte application to a secret court, with no showing even that the information is relevant to the investigation, the Government can lawfully compel a doctor or a hospital to release medical records or a library to release circulation records. This is truly a breathtaking expansion of police power.

Let me turn to a final area of real concern about this legislation, which I think brings us full circle to the cautions I expressed on the day after the attacks. These are two very troubling provisions dealing with our immigration laws in the bill.

First, the administration's original proposal would have granted the Attorney General extraordinary powers to detain immigrants indefinitely, including legal permanent residents. The Attorney General could do so based on mere suspicion that the person is engaged in terrorism. I believe the administration was really overreaching here. I am pleased that our distinguished chairman of the Judiciary Committee, Senator LEAHY, was able to negotiate some protections. The bill now requires the Attorney General to charge the immigrant within 7 days with a criminal offense or immigration violation. In the event the Attorney General does not charge the immigrant, the immigrant must be released.

This protection is an improvement, but the provision remains fundamentally flawed. Even with this 7-day charging requirement, the bill would nevertheless continue to permit the indefinite detention in two situations. First, immigrants who win their deportation cases may be continued to be held if the Attorney General continues to have suspicions. Second, this provision creates a deep unfairness to immigrants who are found not to be deportable for terrorism but have an immigration status violation, such as overstaying a visa. If the immigration judge finds that they are eligible for relief from deportation, and therefore can stay in the country—for example, if they have longstanding family ties here—nonetheless, the Attorney General can continue to hold them indefinitely.

I am pleased that the final version of the legislation includes a few improvements over the bill that passed the Senate. In particular, the bill would require the Attorney General to review the detention decision every 6 months. And it would only allow the Attorney General or the Deputy Attorney General—not lower level officials—to make that determination.

While I am pleased these provisions are included in the bill, I believe it still falls short of meeting even basic constitutional standards of due process and fairness.

The bill continues to allow the Attorney General to detain persons based on mere suspicion. Our system normally requires higher standards of proof for a deprivation of liberty. For example, deportation proceedings themselves are subject to a clear and convincing evidence standard. And, of course, criminal convictions require proof beyond a reasonable doubt. The bill also continues to deny detained persons a trial or a hearing where the Government would be required to prove that that person is, in fact, engaged in terrorist activity. I think this is unjust and inconsistent with the values of our system of justice that we hold dearly.

Another provision in the bill that deeply troubles me allows the detention and deportation of people engaging in innocent associational activity. It would allow for the detention and deportation of individuals who provide lawful assistance to groups that are not even designated by the Secretary of State as terrorist organizations but instead have engaged in something vaguely defined as "terrorist activity" sometime in the past. To avoid deportation, the immigrant is required to prove a negative: That he or she did not know, and should not have known, that the assistance would further terrorist activity.

I think this language creates a very real risk that truly innocent individuals could be deported for innocent associations with humanitarian or political groups that the Government later chooses to regard as terrorist organizations. Groups that could fit this definition could include Operation Rescue, Greenpeace, and even the Northern Alliance fighting the Taliban in northern Afghanistan. So this really amounts to a provision of "guilt by association," which I think violates the first amendment.

Speaking of the first amendment, under this bill, a lawful permanent resident who makes a controversial speech that the Government deems to be supportive of terrorism might be barred from returning to his or her family after taking a trip abroad.

Despite assurances from the administration at various points in this process that these provisions that implicate associational activity would be improved, there have been no changes in the bill on these points since it passed the Senate.

Here is where my caution in the aftermath of the terrorist attacks and my concern about the reach of the antiterrorism bill come together. To the extent that the expansion of new immigration powers that the bill grants the Attorney General are subject to abuse, who do we think is most likely to bear the brunt of that abuse? It probably won't be immigrants from Ireland. It probably won't be immigrants from El Salvador or Nicaragua or immigrants from Haiti or Africa. Most likely it will be immigrants from Arab, Muslim and South Asian countries.

In the wake of these terrible events, our Government has been given vast new powers, and they may fall most heavily on a minority of our population who already feel particularly acutely the pain of this disaster.

Concerns of this kind have been raised with the administration. Supporters of this bill have just told us: Don't worry, the FBI would never do that. I call on the Attorney General and the Justice Department to ensure that my fears are not borne out.

The antiterrorism bill we consider in the Senate today, of course, highlights the march of technology and how that march cuts both for and against personal liberty. But Justice Brandeis foresaw some of the future in a 1928 dissent when he wrote:

> The progress of science in furnishing the Government with means of espionage is not likely to stop with wire-tapping. Ways may some day be developed by which the Government, without removing papers from secret drawers, can reproduce them in court, and by which it will be enabled to expose to a jury the most intimate occurrences of the home. . . . Can it be that the Constitution affords no protection against such invasions of individual security?

We must grant law enforcement the tools that it needs to stop this terrible threats, but we must give them only those extraordinary tools that they need and that relate specifically to the task at hand.

In the play, "A Man for All Seasons," Sir Thomas More questions the bounder Roper whether he would level the forest of English laws to punish the Devil. "What would you do?" More asks. "Cut a great road through the law to get after the Devil?" Roper affirms. "I'd cut down every law in England to do that." To which More replies:

> And when the last law was down, and the Devil turned round on you—where would you hide, Roper, the laws all being flat? This country's planted thick with laws from coast to coast . . . and if you cut them down . . . d'you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil benefit of law, for my own safety's sake.

We must maintain our vigilance to preserve our laws and our basic rights. We in this body have a duty to analyze, to test, to weigh new laws that the zealous and often sincere advocates of security would suggest to us. That is what I have tried to do with the antiterrorism bill, and that is why I will vote against this bill when the roll is called.

Protecting the safety of the American people is a solemn duty of the Congress. We must work tirelessly to prevent more tragedies like the devastating attacks of September 11. We must prevent more children from losing their mothers, more wives from losing their husbands, and more firefighters from losing their heroic colleagues. But the Congress will fulfill its duty only when it protects both the American people and the freedoms at the foundation of American society.

So let us preserve our heritage of basic rights. Let us practice as well as preach that liberty, and let us fight to maintain that freedom that we call America.

Madam President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. REID. Madam President, on behalf of Senator LEAHY, I yield 10 minutes to the Senator from North Dakota.

Mr. HATCH. May I make a few comments before?

Mr. REID. When the Senator from Utah finishes his remarks, I ask that the Senator from North Dakota be recognized for 10 minutes.

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

The Senator from Utah.

Mr. HATCH. I rise to address briefly a couple of the points made by the distinguished Senator from Wisconsin.

First, what he called a "sneak and peek" search warrant, these warrants are already used throughout the United States, throughout our whole country. The bill simply codifies and clarifies the practice making certain that only a Federal court, not an agent or prosecutor, can authorize such a warrant.

Let me be clear. Courts already allow warrants under our fourth amendment. It is totally constitutional. It has been held so almost from the beginning of this country; some will say from the beginning of this country. Together with Senator LEAHY, we carefully drafted a provision that standardizes this widely accepted practice.

Second, to respond to the suggestion that the legislation is not properly mindful of our constitutional liberties—my friend from Wisconsin talks theoretically about maybe the loss of some civil liberties—I would like to talk concretely about the loss of liberty of almost 6,000 people because of the terrorist acts on September 11. I am a little bit more concerned right now about their loss of life. I am even more concerned now that they have lost their lives that thousands of other Americans don't lose their lives because we fail to act and fail to give law enforcement the tools that are essential.

It is a nice thing to talk about theory. But we have to talk about reality. We have written this bill so the constitutional realities are that the Constitution is not infringed upon and civil liberties are not infringed upon except to the extent that the Constitution permits law enforcement to correct difficulties.

Yes, I think we must protect the Constitution, and that has been at the top of my list all through my 25 years in the Congress. This bill does just that. Nothing in this bill undermines constitutional liberty. Nothing in this bill comes remotely close to the Alien and Sedition Act, which, of course, was held to be unconstitutional, or the internment of Japanese prisoners of war, which was a disgrace—there is no question about it, but at that point it was held to be constitutional—or the other outrages that have occurred in the past that were mentioned by the distinguished Senator from Wisconsin.

The tools we are promoting in this legislation have been carefully crafted to protect civil liberties. In addition to protecting civil liberties, give law enforcement the tools they need so we, to the extent we possibly can, will be able to protect our citizens from events and actions such as happened on September 11 of this year.

Thousands of Americans died that day, thousands. That is real. We have been told there may be some other actions taken by terrorists. That may be real. To the extent that may be real, we sure want to make sure our law enforcement people, within the constraints of the Constitution, have the optimum law enforcement tools they need to do the job.

As the past few weeks have made clear, these terrorists still have a gun pointed at the heads of all the American people. Under such circumstances, it is our sworn duty to do everything in our power, within the bounds of the Constitution, to protect and defend our people. That is what this bill does.

The Senator from Wisconsin worries about the "possible" loss of civil liberties. That is laudable. But I am more concerned about the actual loss of the thousands of lives that have been lost and the potential of other lives that may be lost because we don't give law enforcement the tools they need.

This bill protects us, to the extent that we possibly can, against further attacks such as occurred on September 11 and many, many other potential attacks as well.

I think most people in this country would be outraged to know that various agencies of Government, the intelligence community, and law enforcement community, under current law—until this bill is passed—cannot exchange information that might help interdict and stop terrorism. People are outraged when they hear this. And they ought to be.

The fact is that that is the situation. I know the heads of the Criminal Division of the Justice Department have said that: Unless we can share this information, we cannot pick up the people who are terrorists, whom we need to stop, in time to stop them. I think they would be outraged to know that, under title III, you cannot electronically surveil a terrorist unless there is some underlying criminal predicate. In many cases, there is no underlying criminal predicate, so you can't do to terrorists what we can do for health care fraud, or for sexual exploitation of children, or for the Mafia, or for drug dealers.

People would be amazed to know we treat terrorism with kid gloves in the current criminal code. This bill stops that. I think most people would be amazed to know that pen register trap-and-trace devices are not permitted against terrorists under provisions of the law today. You can't get the numbers called out of the phone and you can't get the numbers called into the phone. That is what that means. This bill remedies that so we can get these numbers and do what has to be done.

I think most people are shocked to find out that you can't electronically surveil the terrorists. You have to go after the phone, and then you have to get a warrant in every jurisdiction where that phone shows up. Terrorists don't pay any attention to those antiquated laws. They just buy 10 cell phones, talk for a while, and throw it out the window. We have to be able to track terrorists. Under current law, we cannot do that with the efficiency that needs to be used here. I don't see any

civil liberties violated there, but I see some of them protected. I think of the civil liberties of those approximately 6,000 people who lost their lives, and potentially many others if we don't give law enforcement the tools they need to do the job. That is what this bill does.

I will have more to say, perhaps, on this later. I wanted to make these particular points. I am happy to retain the remainder of my time.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. WELLSTONE. I ask unanimous consent that I may follow the Senator from North Dakota.

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

Mr. DORGAN. I understand we are under a time agreement and I am allotted 10 minutes; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. DORGAN. Madam President, the legislation that is on the floor is legislation I will vote for and support. I think it advances our country's interests in dealing with the issue of terrorism. But I don't want to talk about what is in the bill; I want to talk about something that is not now in the bill and should be. I want to ask the question, Why?

I came to the floor an hour ago and was surprised to find out that something about which I care very much, something agreed to in the Senate, is now no longer in this legislation. Here is the issue. I held and chaired a hearing in my subcommittee on Appropriations a couple weeks ago. The Customs Service was there and Immigration was there. They said we have a system in this country called the advance passenger information system. It is a system under which international air carriers electronically transmit to the Customs Service passenger and cargo manifests, so that before they enter and are cleared for departure, we know who is on that plane and what is on that plane, so we can determine whether there are people who should not be allowed to enter this country. That is the advance passenger information system. It works, but it is voluntary and only 85 percent of the carriers are complying.

I asked at my hearing of Customs and Immigration: Should this be mandatory? They said: Absolutely, we need you to make this mandatory.

When we had the antiterrorism bill on the floor of the Senate, I had cleared an amendment in the managers' package that would make this mandatory. Let me tell you of the airlines that do not comply, for which we don't get advance passenger information: Saudi Arabia, Kuwait, Royal Jordanian, Pakistani International, to name a few airlines that do not comply under the voluntary standard and give us no advance passenger information.

Mr. HATCH. If the Senator will yield, I commend the Senator. I think he is absolutely right. We had it in the Senate bill. It was a worthwhile provision that I think we need to include later, since we can't do it on this bill at this point. I will support him in every way possible to get this done in the future. I commend the Senator for bringing this to the attention of this body because I have to say the House absolutely would not permit us to put that in the bill.

Mr. DORGAN. I inquire of the Senator from Utah, what possibly could be their motive to not want this in the antiterrorism bill?

Mr. HATCH. I think it came down to a jurisdictional argument. That is my opinion. We understand that around here, but we are trying to solve terrorism now. The Senator's point is a very good point. My main reason for interrupting him at this point is to commend him and tell him I will do everything in my power to get that passed. I think it is critical that the other 15 percent be made mandatory, that they have to comply, because most of the airlines comply on a voluntary basis.

I am sorry to interrupt the Senator. I reserve my time.

Mr. DORGAN. Madam President, I appreciate the comments of the Senator from Utah. It is not his fault. I understand he strongly supports this. I kind of felt blind-sided an hour ago when I was told this wasn't in the bill we are discussing because we had cleared it. Apparently, some folks from the other side of this Capitol have this notion of muscle flexing with respect to jurisdictional standards. Frankly, I don't understand that on an issue that is this important. We need advance passenger information clearing—not on a voluntary basis but on a mandatory basis. Somehow it got left out.

I thank the Senator from Utah for his cooperation because we are going to get this done. This needs to be done. If we have a few small-minded people in this Capitol simply protecting their turf and who don't seem to worry about combating terrorism, we will move beyond them and we are not going to pay much attention to their concerns.

If I might ask, how much time remains on my 10 minutes?

The PRESIDING OFFICER. The Senator has 6½ minutes.

Mr. DORGAN. I want to mention two other issues, and they don't relate directly to this bill. They are very important to me.

We are talking about antiterrorism activities. We have an organization down at the Treasury Department's Office of Foreign Asset Control. I happen to fund that area, as I am chairman of the Appropriations subcommittee that funds that. I want to say something I said before the terrorist attacks of September 11. OFAC, in my judgment, ought to be using its resources to track terrorists and track the trail left by terrorists with the movement of money around the globe.

But in August I pointed out that what OFAC was doing—at least with some of its resources—and it appears that 10 percent of the resources of OFAC is devoted to chasing little old ladies in tennis shoes from Illinois who join a bicycle club from Canada and go bicycling in Cuba and 15 months later get a letter from the Treasury Department that they have a $9,500 fine. That is one example of a retired teacher from Illinois. OFAC is chasing retired folks who go on a bicycling trip to Cuba with a Canadian bicycling Club, and she was fined $9,500. I talked to her and others who have been fined.

There was a $55,000 fine for someone who was with some friends in the Cayman Islands and they decided to go to Cuba for the weekend. This guy is wondering what on Earth has happened. He was not supposed to travel to Cuba, but he didn't know it. OFAC is supposed to be tracking terrorists, but they are chasing retired schoolteachers from Illinois for taking a bicycling trip in Cuba.

Let's stop this foolishness and track the trail of terrorists. It doesn't make sense to be doing what OFAC has been doing. First of all, it is embarrassing. I understand the restrictions on travel, which we should change and we will change, but should we be using 10 percent of the assets of OFAC to track these people down and levy civil fines at a time when terrorists are designing approaches to kill Americans? What on Earth is going on here?

I say to Treasury and OFAC, if they are listening: Get busy doing the right things. Get right about public policy initiatives that we are funding you to do.

Let me mention one additional item. If I may, and again it relates to antiterrorism, not necessarily just to this bill, and that is the issue of northern border security. We have a 4,000-mile border between the United States and Canada, with 128 ports of entry, and 100 of them are not staffed at night. At 10 o'clock at night, the security between the United States and Canada is an orange rubber cone, just a big old orange rubber cone. It cannot talk. It cannot walk. It cannot shoot. It cannot tell a terrorist from a tow truck. It is just a big fat dumb rubber cone sitting in the middle of the road.

Those who want to come in illegally at 11 or 12 o'clock at night and are polite about it will stop in front of the rubber cone, remove the rubber cone, drive through, and replace it. Those who do not care will shred it at 60 miles an hour. That is supposed to be security in this country.

We know a terrorist came across that northern border at Port Angeles. This particular Middle Eastern terrorist was going to create substantial bombing activities of public facilities at the turn of the millennium in Los Angeles. We know the terrorists know where it is easy to get through our border and where it is not.

Having said all that, that a rubber cone is no substitute for security, the Treasury Department has said to this

Congress that none of the $20 billion we appropriated for security is going to go for increased resources at the northern border for Customs. The other side, Immigration and Border Patrol, are going to get increased resources, but the Treasury Department says: No, we do not need additional resources with the Customs Service.

Nothing could be further from the truth. I am just asking these people who are thinking through these issues to start thinking the right way. We do need additional resources. That is why we provided the $20 billion. We do need additional security on the northern border. Yes, orange rubber cones are inexpensive. They are also ineffective. They are no substitute for security in this country. I know I am going a bit afield from this bill, but I wanted to make the other two points about OFAC and what it is doing and northern border security because that, too, relates to the issue of antiterrorism and this country's ability to deal with the terrorist threats.

I conclude by saying I came here to talk about the advance passenger information system. I, again, feel terrible it was left out of this bill because we had agreement in the Senate. I understand some folks in the House refused to move on this issue.

One way or another I am going to get this done in the next couple of weeks. I will find a bill, a vehicle. This is going to get done. I appreciate the willingness of the Senator from Vermont and the Senator from Utah to help me do that. That is a glaring omission from this bill, and if the House does not want to do it on this bill, we will force them to do it on another bill.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, on behalf of Senator LEAHY, I yield 10 minutes to the Senator from Massachusetts, and I ask unanimous consent that his remarks follow—there is an order already in effect for Senator WELLSTONE to be heard now—the remarks of Senator WELLSTONE.

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

The Senator from Minnesota.

Mr. WELLSTONE. I thank the Chair.

Madam President, this is one of the most important pieces of legislation we will consider during this Congress. The horrific loss of life and destruction that occurred on September 11, the crime against humanity, changed us as a country. The Uniting and Strengthening America Act is an opportunity to help ensure that such terrorist attacks do not occur again. We need to improve all aspects of our domestic security, including by enhancing our intelligence capacities so that we can identify possible future attacks in their planning stages and prevent them from happening. We must be vigilant and willing to invest the resources and time required to gather the information that we need to protect ourselves and our way of life.

I appreciate the enormous amount of time and energy that my colleagues in both Chambers have put into this legislation. They have done their best to balance the risk of further terrorist attacks with possible risks to civil liberties. This comprehensive bill includes measures to enhance surveillance; improve the working relationship among Federal, State, and local agencies; strengthen border control; permit the detention of certain suspects who may be the subject of investigative efforts; help crime victims; respond to bioterrorism; and crack down on money laundering.

I am especially supportive of two new important provisions added in conference that will enhance domestic preparedness against future attacks, at the local level: the First Responders Assistance Act, and the Grant Program for State and Local Domestic Preparedness Support. These provisions authorize grants to State and local authorities to respond and prevent acts of terrorism, particularly for terrorism involving weapons of mass destruction and biological, nuclear, and chemical devices; and revises an existing grant program to provide 1, additional flexibility to purchase needed equipment; 2, training and technical assistance to State and local first responders; and 3, a more equitable allocation of funds to all States.

Last week I traveled to Moorhead, Mankato and Rochester, MN and talked with firefighters and first-responders about this very issue. They told me they desperately need training and equipment to address our new terrorism risks. These local grants are extremely important to address the needs our most important asset in the fight against terrorism: those law enforcement and emergency personnel on the front lines.

Although I still have some reservations about certain provisions of the bill as they might affect civil liberties, and wish that it were more tightly targeted to address only actions directly related to terrorism or suspected terrorism, I am pleased with the inclusion of several key civil liberty safeguards. The bill requires certain electronic reports to go to a judge when pen registers are used on the internet; includes provisions requiring notification to a court when grand jury information is disclosed; and contains a 4-year sunset with limited grandfathering for several of the electronic surveillance provisions.

The bill expands the Regional Information Sharing Systems Program to promote information sharing among Federal, State, and local law enforcement have a critical role to play in preventing and investigating terrorism, and this bill provides them benefits appropriate to such duty. The bill streamlines and expedites the Public Safety Officers' Benefits application process for family members of fire fighters, police officers and other emergency personnel who are killed or suffer a disabling injury in connection with a future terrorist attack. And it raises the total amount of the Public Safety Officers' Benefit Program payments from approximately $150,000 to $250,000.

This bill will also make an immediate difference in the lives of victims of terrorism and their families. It refines the Victims of Crime Act and by doing so improves the way in which its crime fund is managed and preserved. It replenishes the emergency reserve of the Crime Victims Fund with up to $50 million and improves the mechanism to replenish the fund in future years. The USA Act also increases security on our northern border, including the border between Canada and my State of Minnesota. It triples the number of Border Patrol, Customs Service, and INS inspectors at the northern border and authorizes $100 million to improve old equipment and provide new technology to INS and the Customs Service at that Border.

On the criminal justice side, the bill clarifies existing "cybercrime" law to cover computers outside the United States that affect communications in this country and changes sentencing guidelines in some of these cases. It provides prosecutor better tools to go after those involved in money laundering schemes that are linked to terrorism, and it adds certain terrorism-related crime as predicates for RICO and money-laundering. At the same time, the bill establishes procedures to protect the rights of persons whose property may be subject to confiscation in the exercise of the government's antiterrorism authority. It strengths our Federal laws relating to the threat of biological weapons and enhances the Government's ability to prosecute suspected terrorists in possession of biological agents. It will prohibit certain persons, particularly those from countries that support terrorism, from possessing biological agents. And it will prohibit any person from possessing a biological agent of a type of quantity that is not reasonably justified by a peaceful purpose.

I support these much-needed measures. And I especially support the four-year sunset provision for several of the electronic surveillance provisions. I do wish, however, that some provisions were might tightly targeted to address only actions directly related to terrorism or suspected terrorism. It is for this reason, I believe we will need to monitor the use of new authorities provided to law enforcement agents to conduct surveillance. The bill broadens the Foreign Intelligence Surveillance Act, FISA, by extending FISA surveillance authority to criminal investigations, even when the primary purpose is not intelligence gathering. The bill limits this ability by authorizing surveillance only if a significant purpose of it is to gather intelligence information. I hope this new FISA authority will be used for the purpose of investigating and preventing terrorism or

suspected terrorism, and not for other domestic purposes. The bill also allow surveillance to follow a person who uses multiple communications devices or locations, the so-called "roving wiretap." Again, I am hopeful this new authority will not be abused.

We have done our best in this bill to maximize our security while minimizing the impact some of these changes may have on our civil liberties. Nearly all of us have probably said since September 11 that if that day's terror is allowed to undermine our democratic principles and practices, then the terrorists will have won a victory. We should pass this bill today. And we should also commit ourselves to monitoring its impact of civil liberties in the coming months and years.

Our challenge is to balance our security with our liberties. While it is not perfect, I believe we are doing that in this bill.

Madam President, it is a jarring analogy, but I use it to explain how I arrived at my decision on this legislation. In 1940 and 1941, the Germans engaged in an unprecedented attack on the civilian population of Great Britain. The goal was to weaken citizens in their fight against Nazism. At the end of that attack, 20,000 people were killed. On September 11 in our country, close to 6,000 innocent people were massacred.

It is absolutely the right thing to take the necessary steps to try to prevent this from happening and to provide protection to people in our country.

There are many provisions in this legislation with which I agree. They are important to people in Minnesota, Michigan, and around the country, by way of what we need to do to protect our citizens.

When it comes to electronic surveillance, as Senator FEINGOLD has stated with considerable eloquence, the legislation goes too far and goes beyond world terrorists, who I think are a real threat to people in our country and other nations as well.

How do I balance it out? My view is that I support this legislation because all of the positive issues, which I will go into in a moment, that are so important to the people I represent have to do with protecting the lives of people. If we do not take this action and we are not able to protect people, then more people can die, more people will be murdered. That is irreversible. We cannot bring those lives back.

This legislation has a 4-year sunset. I said when the Senate passed the bill that I would reserve final judgment as to whether I vote for the final product based on whether there will be a 4-year sunset when it comes to electronic surveillance. We can monitor—there will be some abuses, I think—we can monitor that, and if there are abuses, it is reversible; we can change it. That is why I err on the side of protecting people, and it is why I support this legislation.

The bill includes measures to enhance surveillance, to improve the working relationships of Federal, State, and local agencies—that has to happen—to strengthen control of the Canadian border. For our States up North, that is very important. When it comes to the detention of certain suspects who may be the subject of investigative efforts, there are safeguards against unlimited detention.

I thank Senator LEAHY and Senator HATCH and others for pulling back from some of the original proposals which made this a much better piece of legislation.

There is a crackdown on money laundering. I thank Senator SARBANES and Senator KERRY and others for their fine work.

There is another provision that is very important. The First Responders Assistance Act and grant program all go together. When I traveled to greater Minnesota last week, when I went to Moorhead, Mankato, Rochester, and Duluth, I spoke with fire chiefs and all said: We are the first responders. We know that from New York. Please get some resources back to the local level. It is a local public safety model where if you give us the resources, let us assess our needs—we have the training; we may need additional equipment—if you are going to talk about the ways we can best protect people, we are going to protect people where they live, where they work, or where their children go to school. Getting the resources to the local community, the fire chiefs, and police chiefs is critically important.

As I said, there are some key civil liberty safeguards. The bill requires certain electronic reports to go to a judge when pen registers are used on the Internet. It includes provisions requiring notification to a court when grand jury information is disclosed, and it contains the 4-year sunset when it comes to the electronics surveillance provisions. That is critically important.

The bill streamlines and expedites the public safety officers benefits application for the firefighters and the police officers and others who were killed and suffered disabling injuries.

It raises the total amount of the Public Safety Officers' Benefits Program.

The Victims Crime Act is in this bill.

It improves the way the crime fund is managed. It replenishes the emergency fund for crime victims up to $50 million. This is really important.

These are the important provisions.

On the other hand, I do wish some of the provisions were more tightly targeted to address only actions directly related to terrorism or suspected terrorism. It is for this reason that I think it is critically important each and every Senator and Representative monitor the use of new authorities provided to the law enforcement agency to conduct surveillance.

We are going to have to monitor this aspect very closely. It has been said, and it should be said, we do not want to pass legislation that undermines our democratic principles or practices. If we do that, the terrorists have won a victory. If I thought this was such legislation, I would not support it.

I will say this one more time: From my point of view, this legislation is better than it was when it passed the Senate. The sunset provision is critically important. Ultimately, where I come down is if we do not take some of these steps with some of the provisions I have outlined, which are very important, very positive in protecting people, and more people are killed and there is more loss of life of innocent people, you cannot bring those lives back.

I am not a lawyer, and this is my layperson way of analyzing this. If there are some abuses with the surveillance, we monitor it, we can pass new legislation, and we can change it. It sunsets in 4 years. That is reversible. I err on the side of protection for people.

I wish we did not even have to consider this legislation. I wish we were not even living in these times. I believe terrorism is going to be a part of our lives. I think it is going to be a part of our children's lives. I think it is going to be a part of our grandchildren's lives. I think this is going to be the struggle for several generations to come. No one action and no one step is going to end it. I think that is now the world, unfortunately, in which we live. That is now the world in which all of God's children live.

There are some things we are going to have to do differently and, as I said, we must be vigilant. Where there are excesses, we need to change that. I do believe this legislation is an important step in the direction of trying to prevent this and providing protection to our citizens.

I yield the floor.

The PRESIDING OFFICER (Mr. NELSON of Nebraska). The Senator from Massachusetts.

Mr. KERRY. Mr. President, I support the conference report before the Senate today. It reflects an enormous amount of hard work by the members of the Senate Banking Committee and the Senate Judiciary Committee. I congratulate them and thank them for that work.

I particularly thank Senator DASCHLE, Senator LEAHY, Senator SARBANES, Senator HATCH, and Senator LEVIN for their work in developing this legislation. I am pleased the Conference Report includes what I consider to be a very important provision regarding money laundering that has been hard fought over and, frankly, long awaited for. We have been working on this for quite a few years, almost 10 years or more when I was a member of the Banking Committee and within the Foreign Relations Committee where I was Chairman of the Subcommittee on Narcotics, Terrorism and International Operations. This really is the culmination of much of that work.

I am pleased at the compromise we have reached on the antiterrorism legislation, as a whole, which includes the sunset provision on the wiretapping and electronic surveillance component. It has been a source of considerable concern for people, and I think the sunset provision provides Congress a chance to come back and measure the record appropriately, and that is appropriate.

The reason I think the money-laundering provision is so important is it permits the United States—it really authorizes and gives to the Secretary of the Treasury the power to be able to enforce the interests of the United States. It allows the Secretary to deny banks and jurisdictions access to our economy if in the last measure they are not cooperative in other ways to prevent money laundering from being a tool available to terrorists.

This is a bill I introduced several years ago that assists our ability to be able to crack down on the capacity for criminal elements, not just terrorists, who are criminals themselves. But also narcotics traffickers, arms proliferators, people who traffic in people themselves. There are all kinds of criminal enterprises which benefit from access to the American financial system. All of these will now be on notice that our law enforcement community has additional tools to use to be able to close the incredible benefits of access to the American financial marketplace.

The global volume of laundered money staggers the imagination. It is estimated to be 2 to 5 percent of the gross domestic product of the United States. That is $600 billion to $1.5 trillion that is laundered, that comes into the country or passes through banks without accountability. Those funds escape the tax system, for one thing. So for legitimate governments struggling to fairly distribute the tax base while the average citizen who gets their paycheck deducted or those good corporate citizens and others who live by the rules, they are literally being required to assume a greater burden because other people using the laundering and lack of accountability escape that responsibility.

The effects of money laundering go far beyond the parameters of law enforcement, creating international political issues and generating very genuine domestic political crises. International criminals have taken advantage of the technology and the weak financial supervision in many jurisdictions to simply smuggle their funds into our system. Globalization and advances in communications and technologies have allowed them to move their illicit gains with much more secrecy, much faster, commingled, and in other ways that avoid or complicate significantly the ability of prosecutors to be able to do their job.

Many nations, some of them remote, small islands that have no real assets of their own, have passed laws solely for the purpose of attracting capital illicitly, as well as legally. By having the legal capital that is attracted by virtue of the haven that is created, they provide the cover for all of the illicit money. There are places not so far away from us, islands in the Caribbean and elsewhere, which at last count I remember $400 billion of assets that supposedly belong to this island in about 1 square mile of the downtown area, most of which was the property of entities that had a brass plate on a door and a fax machine inside, perhaps a telephone number, and that was sort of the full extent of the corporate entity.

So there is $400 billion on an island that everybody knows is not on the island. Where does it go? It goes back into the financial marketplace where it earns interest, is invested, goes into legitimate efforts, much of it legitimate money to begin with but a whole portion of it not. I might add, with the knowledge of people involved in those businesses and many of the banks that receive it.

So if one is going to cope with an al Qaida, with a terrorist entity such as Osama bin Laden, who moves his money into this legitimate marketplace, law enforcement has to have the ability to be able to hold people accountable where it is legitimate to do so.

Now obviously we do not want to do that where there is a legitimate enterprise, and we do not want to create a crossing of the line of the corporate veil that has been protected for a long period of time, and I am not urging that we do that. But we do have to have a system in place, where probable cause exists, for law enforcement entities.

I spent a number of years as a prosecutor. We make pretty good judgments in the law enforcement community about probable cause. They are not always without question, and they are not, obviously, without error at times. We understand that. We have a pretty good system in the United States to protect against that. What we are trying to do with this legislation is to put those protections in place, but even as we put in a series of steps that allow the Secretary of the Treasury to be able to target a particular area as a known money-laundering problem, and then be able to require of the government of that entity, a cooperative effort. It is only if the entity or government's cooperative effort at several different stages is not forthcoming that the Secretary would ultimately consider exercising the power to denying that entity as a whole, or individual banks or other financial institutions, access to our financial marketplace and to its benefits.

I believe this leverage will be critical in our ability to wage a war on terrorism, as well as to be able to wage a sufficient law enforcement effort against the criminal enterprises that exist on a global basis.

I think the Secretary will have a number of different options and it will provide a transparency and an accountability that is absent today.

Let me comment on one criticism that is often raised by some opponents of this legislation who do not like the idea that the United States should somehow put in place sanctions against an entity that has a lower tax rate than we happen to have. I emphasize there is nothing in this legislation that empowers us to take action because another government has a lower tax rate. That is their privilege. It is healthy, as all Members know, to have competition in the marketplace of taxes, too. The Chair is a former Governor and he knows well the competition between States. States will say: We will not have a sales tax; we will not have an excise tax; we will try to make ourselves more business friendly. We want to be as competitive and as low tax as we conceivably can be.

We are not seeking to try to address those jurisdictions that simply make themselves more competitive on a tax basis. What we are trying to address are those jurisdictions that not only have lower taxes but use the lower taxes, coupled with a complete absence of accountability, a complete absence of transparency, a complete absence of living by the law enforcement standards of other parts of the world, to knowingly attract the illicit gains that come from criminal activity or that attract and move terrorist money through the world.

We are simply putting into place the standards by which most of the developed world is living. Ultimately we hope all countries will adopt appropriate money laundering standards so we can all live in a safer world.

Passage of this legislation is going to make it a lot more difficult for new terrorist organizations to develop. I can remember a number of years ago when I was chairing the subcommittee on Narcotics, Terrorism and International Operations, I conducted an investigation into a bank called BCCI, the Bank of Credit Commerce International. We uncovered a complex money-laundering scheme involving billions of dollars. Fortunately, BCCI was forced to close. We were able to bring many of those involved in it to justice. But we have learned since the closing that BCCI was a bank that had a number of Osama bin Ladon's accounts. We learned when BCCI closed, we dealt Osama bin Laden a very serious blow.

So as the Congress gives final approval to this legislation in response to these attacks, we need to keep in our focus the benefits that will come to us by pressing these money laundering standards on banks. With the passage of this legislation, terrorist organizations will not be able to move funds as easily and they will not be able to have their people move within our country with bank accounts that we cannot

penetrate, with major sources of funding transferred to them from the Middle East or elsewhere to empower them to be able to do the kind of things they did on September 11.

I also point out this bill will require the U.S. financial institutions to use appropriate caution and diligence when opening and managing accounts for foreign financial institutions. It will actually prohibit foreign shell banks, those who have no physical location in any country, from opening an account in the United States. Think about that. We currently allow a bank that has no physical presence anywhere—a bank—to open an account in the United States. That is today. With this legislation, that will change. It is high time.

The conference report expands the list of money-laundering crimes and will assist our law enforcement efforts in making it easier to prosecute those crimes. It requires the Federal Reserve to take into consideration the effectiveness financial institutions in combating money-laundering activities before any merger is approved. We will have an ability to judge the road traveled before we open up new opportunities for financial institutions.

The following is a description of the legislative intent of the Counter Money Laundering and Foreign Anti-Corruption Act of 2001 which was included in section 311 of subtitle A—International Counter Money Laundering and Related Measures of the conference report. First, the Secretary of the Treasury determines whether "reasonable grounds exist for concluding" that a foreign jurisdiction, a financial institution operating in a foreign jurisdiction, or a type of international transaction, is of "primary money laundering concern." In making this determination, the Secretary must consult with the Secretary of State, the Attorney General, the Secretary of Commerce, and the United States Trade Representative. The Secretary is also directed to consider any relevant factor, including the quality of a jurisdiction's bank secrecy, bank supervision, and anti-money laundering laws and administration, the extent to which a particular institution or type of transaction is involved in money laundering as compared to legitimate banking operations, whether the U.S. has a mutual legal assistance treaty with the jurisdiction and whether the jurisdiction has high levels of official or internal corruption.

Second, if a jurisdiction, institution, or transaction is found to be a "primary money laundering concern," the Secretary then selects from a menu of five "special measures" to address the identified issue. these five special measures are: requiring additional record keeping and/or reporting on particular transactions; requiring reasonable and practicable steps to identify the beneficial foreign owner of an account opened or maintained in a domestic financial institution; requiring the identification of those using a foreign bank's payable-through account with a domestic financial institution; requiring the identification of those using a foreign bank's correspondent account with a domestic financial institution; and restricting or prohibiting the opening or maintaining of certain corresponding accounts for foreign financial institutions. The special measure relating to the restriction or prohibition of accounts can only be imposed by regulation. However, nothing in this legislation will in any way restrict the right of the Secretary of the Treasury to impose a rule immediately and to ask for comment at the same time. The other four special measures may not remain in effect for more than 120 days, except pursuant to a rule promulgated on or before the end of the 120-day period beginning on the date of the issuance of such order.

In choosing which "special measure" to impose and how to tailor it, the Secretary shall consider the extent to which they are used to facilitate or promote money laundering, the extent to which they are used for legitimate business purposes and the extent to which such action will sufficiently guard against money laundering. The Secretary is also to consult with the Chairman of the Board of Governors of the Federal Reserve. If the Secretary is considering prohibiting or restricting correspondent accounts, he is also to consult with the Secretary of State and the Attorney General. The Secretary is also obligated to consider three factors: whether other countries or multilateral groups are taking similar actions; whether the imposition of the measure would create a significant competitive disadvantage for U.S. firms, including any significant cost or compliance; the extent to which the action would have an adverse systemic impact on the payment system and legitimate business; and the effect of such action on United States national security and foreign policy.

Within 10 days of invoking any of the special measures against a primary money laundering concern, the Secretary must notify the House and Senate Banking Committees of any such action taken.

The conference report includes a provision within section 351 relating to reporting of suspicious transactions which clarifies that the "safe harbor" from civil liability for filing a Suspicious Activity Report (SAR) applies in any litigation, including suit for breach of contract or in an arbitration proceeding and clarifies the prohibition on disclosing that a SAR has been filed.

Section 353 of the conference report also includes a provision that increases penalties for violation of Geographic Targeting Orders (GTO) by making it a civil and criminal offense on par with existing law to file reports required by a Geographic Targeting Order; requiring structuring transactions to fall below a GTO-lowered threshold a civil and criminal offense on par with structuring generally; and extends the presumptive GTO period from 60 to 180 days.

Finally, section 355 of the conference report includes a provision that grants financial institutions civil immunity for including suspicions of criminal wrongdoing in a written reference on a current or former employer.

It has been brought to my attention that this bill, as originally passed by the House, contained a rule of construction which could have limited our ability to provide assistance and cooperation to our foreign allies in their battle against money laundering. The House-passed rule of construction could have potentially limited the access of foreign jurisdictions to our courts and could have required them to negotiate a treaty in order to be able to take advantage of our money-laundering laws in their fight against crime and terrorism. The conference report did not include a rule of construction because the Congress has always recognized the fundamental right of friendly nations to have access to our courts to enforce their rights. Foreign jurisdictions have never needed a treaty to have access to our courts. Since some of the money-laundering conducted in the world today also defrauds foreign governments, it would be hostile to the intent of this bill for us to interject into the statute any rule of construction of legislative language which would in any way limit our foreign allies access to our courts to battle against money laundering. That is why we did not include a rule of construction in the conference report. That is why we today clarify that it is the intent of the legislature that our allies will have access to our courts and the use of our laws if they are the victims of smuggling, fraud, money laundering, or terrorism. I make these remarks today because there should be no confusion on this issue and comments made by others should not be construed as a reassertion of this rule of construction which we have soundly rejected. Our allies have had and must continue to have the benefit of U.S. laws in this fight against money laundering and terrorism.

Smuggling, money laundering, and fraud against our allies are an important part of the schemes by which terrorism is financed. It is essential that our money laundering statutes have appropriate scope so our law enforcement can fight money laundering wherever it is found and in any form it is found. By expanding the definition of "Specified Unlawful Activity" to include a wide range of offenses against friendly nations who are our allies in the war against terrorism, we are confirming that our money laundering statutes prohibit anyone from using the United States as a platform to commit money laundering offenses against foreign jurisdictions in whatever form that they occur. It should be clear that our intention that the money laundering statues of the United States are intended to insure that all criminals and terrorists cannot circumvent our laws. We shall continue to give our full cooperation to our allies in their efforts to combat smuggling and money laundering, including access to our courts and the unimpeded use of our criminal and civil laws.

Ms. CANTWELL. Mr. President, we must act on many fronts to wage a successful fight against terrorism. The USA Patriot Act of 2001 will provide our law enforcement agencies with significant new tools to fight this battle on the home front. There are many good things in this bill. I am especially pleased that the bill includes language to allow the tripling of manpower on our northern border. The bill also includes a provision to set a new technology standard for our visa program so we can better identify people coming into this country. I am very proud of the many tools in the bill for law enforcement. This legislation increases the number of FISA judges to speed law enforcement's ability to get taps in place and going and contains excellent new provisions to help law enforcement and banks better track and freeze financial assets of terrorists. Further, the bill provides for expedited hiring and training of FBI translators. Finally, the legislation takes steps to allow better sharing of information between the law enforcement and intelligence communities, although I believe this sharing and coordination would be better accomplished with a process for judicial review.

But I have my concerns, as well, with the scope and the pace of these sweeping changes. We may have gone further than we really need to go to address terrorism. Thanks to the extremely hard work of Senator LEAHY and his staff, Senator HATCH and others in both houses of Congress, this legislation is much more carefully tailored to addressing terrorism than the legislation proposed by the Administration only a short month ago. But I remain concerned about several provisions such as those involving wiretap authorities, pen register and trap and trace, computer trespass, access to business records and other new legal authorities which will not require a showing by the government of probable cause or allow for any meaningful judicial review. The scope of these provisions may make them susceptible to abuse—allowing inappropriate, possibly unconstitutional, intrusion into the privacy of American citizens. I am pleased that some of the most disconcerting provisions of this legislation will expire in four years. This "sunset" provision will give Congress the opportunity to evaluate the implementation of these new laws, and reassess the need for the changes.

I would like to believe that the government's new ability to place wiretaps on the lines of American citizens—in secret with limited reporting and opportunity for oversight by Congress—will not be abused. I would like to believe that technologies like Carnivore will not be used to derive content from email communications. But I am skeptical.

Several other aspects of this bill, when taken together, could also interfere with Americans' enjoyment of their right to privacy without providing value in the fight against terrorists. Those of us who feel strongly about how new powers might chip away at traditional privacy rights will pay close attention to how law enforcement uses these tools.

The bill's ostensible purpose in regard to searches of personal communication is to facilitate the sharing of information gathered in a law enforcement context with the intelligence community. There is a difference, however, between facilitating the sharing of information between the law enforcement and intelligence communities, and blurring the line between the missions of the two communities. Where information is sought for the purpose of law enforcement, we must ensure that fourth amendment protections apply. Our fear about the legislation comes from a legitimate concern that information gathered ostensibly for intelligence and defense purposes could be used for law enforcement purposes. The intelligence community does not prosecute and lock up its targets; it uses information to intervene against foreign nationals seeking to harm America or Americans. But the law enforcement community has a different mission, to catch and prosecute criminals in our courts of law. Because law enforcement acts upon U.S. citizens, it must do so within the bounds of the Constitution. The differences in these missions must be acknowledged, and we must be vigilant to maintain the distinctions.

Last week, Senator LEAHY and I discussed here on the floor the need to maintain strict oversight of the law enforcement community's use of new authorities enumerated in this legislation. Today I want to reiterate the need for that oversight, the need for regular Government Accounting Office reports to Congress of the use of the new authorities under FISA and pen register and trap and trace law and the need for the Committee on the Judiciary to scrutinize the use of these new authorities regularly. I am pleased that many members of the Senate believe we must pursue this duty diligently.

I am also pleased that the final version of this legislation incorporates a four-year limit on the applicability of these and many other search authorities. With this "sunset," law enforcement and intelligence agencies will be able to use new powers to identify and act on terrorist efforts and Congress will have the ability to review fully the implications of the new law.

We can all agree that the events on September 11 have focused America on the fight against terrorism, and we applaud the efforts of the administration in the weeks since that tragic day. Clearly, there were failures in our investigative network, and this legislation will help avoid such failures in the future, allowing greater sharing of information that could foil terrorists before they carry out their brutal schemes against innocent civilians.

The question then becomes how to make sure that the new authority isn't abused—in fact used for law enforcement purposes or fishing expeditions. Over many years and with great effort, we have crafted a careful balance in protecting personal privacy. The bottom line is this legislation could circumvent or supersede Federal and State privacy laws that have balanced law enforcement needs and privacy concerns, going well beyond the changes to the law needed for intelligence gathering. This is no ordinary time for our country. But in this process we must remember those Fourth Amendment rights that we have so diligently fought for in the past.

I am proud of this Congress for acting promptly and thoughtfully in response to the horrific events of September 11. That day was an awakening to Americans, signaling the urgency for this government to change how we deal with terrorism. This legislation does much to facilitate better information gathering and sharing between our law enforcement and intelligence communities and greater protection of our borders from the intrusion of terrorists. I am hopeful that those of us in government have the wisdom and prudence to use these new powers in such a way as to not undermine the freedoms we seek to protect.

Mr. President, currently, there is no single technology standard in place that allows the Federal Government to confirm with certainty the identity of aliens seeking entry into the United States through the visa program. Insufficient identification technology is available to our consular officers responsible for reviewing visa applications to facilitate a comprehensive background check of persons applying for a United States visa. Consular officers lack the technology to verify that a person seeking a visa has not previously sought or received a visa using another name or identity. Similarly, there is no widely implemented technology that allows United States border inspectors to confirm the identity of persons seeking admittance into the United States using a visa.

Pursuant to Section 403(c) of the USA PATRIOT Act of 2001, the Federal Government is required to develop and implement a technology standard that can facilitate extremely high confidence in confirming the identity of an alien seeking a visa or seeking entry into the United States pursuant to a visa.

The standard required by these provisions will facilitate the capture and sharing of all relevant identity information regarding the alien applicant,

including biometrics, and information relevant to determining the eligibility of such a person for entry into the United States from and between all relevant departments and agencies through compatible, interoperable systems.

The purpose of this subsection is to ensure that United States Government will establish a technology standard to allow: 1, the State Department, at the time a person applies for a United States visa, to do a comprehensive background check against databases of known aliens ineligible for entry into the United States; 2, the State Department to verify the identity of a person applying for a United States visa as a person who has not on a previous occasion sought a visa using a different name or identity; and 3, United States border inspectors and preclearance agents to confirm that a person seeking entry to the United States on the basis of a visa is the same person who obtained the visa from the Department of State.

Although it is understood by Congress that technological advances may require revisions to any standard adopted pursuant to this provision, it is expected that the standard will initially incorporate appropriate biometric technologies to compare identity information provided by the visa applicant to criminal, immigration and intelligence databases that use a fingerprint biometric or a facial recognition biometric.

Further, to obtain the greatest protection of United States citizens by excluding persons ineligible for entry into the United States, the Department of State, the Department of Justice and other appropriate departments of the Federal Government should work with the governments of other countries to encourage such countries to adopt the standard established pursuant to this subparagraph and to establish international interoperability of identity databases. In particular, it will be beneficial to the United States to facilitate adoption of this technology standard for appropriate identity information exchange with Canada and Mexico. It would further benefit the security of United States citizens to encourage adoption of this standard by those countries for whose citizens the United States, Canada or Mexico do not require a visa to enter the respective country.

Paragraph (1) requires the Department of Justice and Department of State, through the National Institute of Standards and Technology (NIST), and in consultation with other Federal law enforcement and intelligence agencies deemed appropriate by the Attorney General or the Secretary of State, to develop a technology standard to facilitate confirmation of the identity of persons seeking a visa or persons using a visa to enter the United States. The Departments of Justice and State shall also consult with Congress in the development of this standard through the reporting process described in paragraph (4) of this subsection.

This technology standard will enable the Department of State to confirm that a person seeking a visa is not known to the Federal Government as a person ineligible for a visa, or is a person who has sought or obtained a visa using a different name or identity. The technology standard will also enable Federal inspectors at all ports of entry and preclearance locations to confirm that a person seeking entry to the United States using a visa is the same as the person to which the Department of State issued the visa, and is not a person sought by the Federal Government to be excluded from entry to the United States.

The technology standard must be developed and certified by NIST within two years of the date of enactment of this subsection.

Paragraph (2) provides that the technology standard described in paragraph (1) shall be the basis for a cross-agency, cross-platform electronic database system that is a cost-effective, efficient, fully integrated means to share law enforcement and intelligence information necessary to confirm the identity of a person applying for a United States visa, or such a person seeking to enter the United States using a visa.

Paragraph (3) requires that the system described in paragraph (2) shall be implemented in a manner that is readily and easily accessible to all consular officers responsible for the issuance of United States visas; all Federal inspection agents at United States border inspection points (including any preclearance locations); and all law enforcement and intelligence officers responsible for investigation or identification of aliens admitted to the United States pursuant to a visa, provided that such officers are provided access to this system pursuant to regulation.

Paragraph (4) provides that the Attorney General and the Secretary of State jointly and in consultation with the Secretary of the Treasury, shall report to Congress within 18 months of the date of enactment of this Act, and every two years thereafter, describing the development, implementation and efficacy of the technology standard described in this subsection. The report must also consider the privacy implications and applicability of Federal privacy laws.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. I yield the Senator as much time as he requires.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. I thank the Senator from Utah, the leader on our side on this committee.

I want to talk just in specifics about one area with which this bill deals. We know that as a result of the tragedy of September 11 and the continuing problems we are having with anthrax and other threats from abroad, we need to do a better job of seeing who comes into this country to make sure people who wish to do us harm are, if possible, screened out before they get here so people who are visitors from abroad who engage in things that are inappropriate, who violate the terms of their visas or their other status, can be removed.

So after the September 11 incident happened and people started talking about problems in immigration, I spent a full day traveling with representatives from the INS in my State. We are in the heartland, but Missouri is directly involved because many of these visitors come to Missouri as well. I know the people at our major ports have even greater problems, but we saw the problems firsthand.

I said: Why can't you get somebody out of the country if they overstay their visa?

And they asked a very logical question: How do you know where they are? We don't have a good system.

I said: Is it possible?

They said: You probably could not give us enough INS enforcement agents to make sure we could find every person. They come in, they say they are going to go to Branson, MO, or they are going to visit the Arch in Missouri, and they may go to one or two other lesser tourist attractions across the country, and we don't know where they are.

As a result of discussions with them and some great assistance I received from my cosponsors, Senator CONRAD and Senator SNOWE, we put together what we think are some significant improvements in the way we deal with visitors to this country to lessen the likelihood that they will be able to participate in causing harm to citizens of the United States. So we have put together the Visa Integrity and Security Act. I express our sincere appreciation to the managers of this bill and to our colleagues in the House for adopting these principles and putting them into the bill.

This is not going to be a total solution. Nobody can expect that we are going to do a 100-percent job. But when we look at what has happened in the past, we think this is going to be a significant improvement.

As Senator SNOWE pointed out, Sheik Rahman, who has been in prison for his part in the first bombing of the World Trade Center, had been on a watch list, the Foreign Intelligence Watch List, for years, and nobody told the State Department or the INS, and they gave him permanent status in the United States. That was after he had been identified.

We are saying the criminal agencies, the law enforcement agencies have to talk with the State Department, the people who are issuing these visas, and let them know we should not let this guy back into the United States. He came and went five times. That is just not acceptable.

I also trust the State Department will change the directions in their

manual which has said in recent years that merely urging terrorist activities or belonging to a terrorist organization do not disqualify you from coming to the United States. I mean, if you are a member of al-Qaida, you say: Oh, well, he may not be one of the murderers?

Give me a break. If there is any ground for keeping somebody out of the United States, it ought to be that they are a member of al-Qaida. I hope in the future we can share that information and make sure they do not come in.

So one of the things we require is that the FBI share the National Criminal Information System with the State Department and the INS. We are going to ask the Director of Homeland Security to report to Congress on the need for any other Federal agencies, intelligence agencies, to share or feed their information into this database.

One of the things we know now is that people can come in under one name and then change names and we don't know exactly who they are. We don't have a foolproof method of identifying these people who come into the United States. Isn't it about time we know for certain, before they even come in, who they are? Doesn't it make sense that we know for certain who they are when they are in the United States?

I talked with the dean of the engineering school at the University of Missouri at Columbia. He said 10 years ago it wouldn't be possible but now, clearly, we have the technology to do this. So this bill instructs the Attorney General to implement an automated system to track the entry and exit of visa holders, to make sure who they are, where they are, and what their status is.

Back in my time, we used to talk about fingerprints. Now the term is a biometric system. There are a number of different systems to review. There can be digitized facial profiles, digitized photos of the iris of the eye, whatever is most feasible and effective there—to select that. We need to put some money in putting the machinery in our consular offices overseas so when somebody comes in and presents himself to get a visa to get into the country, we can find out and make a record, permanently, of who they are. No more using stolen passports.

One of our partners in Western Europe who operates under the visa waiver system has a problem with 60,000 stolen passports. Right now, if you buy a passport or take somebody else's visa, we have a tough time tracking them. But once they get that biometric card, we know positively. We have a modern-day thumbprint on them. We can check them out overseas; we can check them in our records. When they come to the port of entry, we check them at the port of entry to make sure they are who they say they are. And if they do not get out of the country in time, we turn that information over to law enforcement agencies, so if there is a contact with a law enforcement agency, this rings a bell: You are out of status. You stayed too long. Or if a student leaves the school, departs the school which he or she is supposed to attend or an H-1B visa holder leaves the job he or she is supposed to have, that is reported to the INS and they can turn over that information. Any law enforcement official in the United States who comes in contact with him will know that person is out of status.

Somebody says: Why is it important to know if they are out of status? Many people who are out of status and performing activities that are highly suspicious may not rise to the level of criminal indictment or for a criminal information to be filed against them, but if they are involved in suspicious activities and they are out of status, they are violating the terms of their visa and they can be deported and we potentially can avoid problems before they actually occur.

This is not going to be 100 percent effective. But when people are out of status, particularly if they are acting suspiciously, we will have a record on them, and we need to tighten up the system to know when they leave. Right now, it just depends upon the airlines, making sure they tell us who leaves the country. That is not good enough. We need to keep a record of who comes in and who leaves so we know who is overstaying their visa. They say 4 to 6 million people are here illegally because they overstayed their visa, and we don't have any idea how to find them. At least if we have a biometric card, when they come in contact with a law enforcement agency, then we can do that.

Student visas are another thing. A lot of people focused on the student visas. That is a small portion of the people who come to the United States. There were a couple of people involved in the September 11 tragedy who were here on student visas.

Hanni Hanjour came here supposedly to study English in California and never showed up at school. The school didn't know he was coming. They didn't tell anybody. The next time we heard from him he was apparently piloting the plane that went into the Pentagon.

It is not the student visas that are the problem. All visas are problems. But in this bill we authorize almost $70 million to implement the system that Congress dictated 4 or 5 years ago to track the people who come into the United States and to get a solid tracking system to know if they are overstaying their visa. If they do not show up for school, then the schools would have to notify the INS. It would apply the same requirements to language schools, to vocational schools, and, yes, especially to flight schools. So we would know who was coming in.

This data system which has been put on the slow road is to be speeded up and to be fully in effect by the beginning of January 2003. So we will have a better system.

Let me say a brief word about student visa holders. The foreign students who come to this land are a vitally important part of our educational system. We are very proud in Missouri to have a number of schools with a significant number of foreign students who bring their culture, their experience, and their knowledge to this country. In my view, one of the best foreign relation tools we have is to share education with the future leaders of other countries.

I have traveled extensively in Asia. I have found that many of the governmental leaders, scientific leaders, and leaders in journalism have studied in my State. They come up to me and ask how the Missouri Tigers are doing. They know what we are about. We have a good basis to talk with them.

I was in Malaysia in August to talk about the potential that we have to gain great medical insight and perhaps advances through biotechnology using the information in genes in the Malaysian rain forest. Two of the leaders graduated from the University of Missouri.

These are in the bill. The visa waiver program needs to be tightened up so countries that just send their citizens into our country without going through the visa process—we need to work with them and negotiate with them so they have a strong, positive identifier, and so we have the same kind of identification with them as we do with these other states.

I know many people want to speak on this. I, again, express my appreciation to the managers of the bill. I thank my cosponsors, Senator CONRAD and Senator SNOWE. I urge adoption of this measure which I think is going to move us significantly in the right direction of preventing terrorist activities in the future.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I will take a moment. How much time is remaining to the Senator from Vermont?

The PRESIDING OFFICER. The Senator from Vermont has 41 minutes remaining.

Mr. LEAHY. Mr. President, I know the distinguished senior Senator from New York has been waiting on the floor for some time. How much time is the Senator from New York going to want?

Mr. SCHUMER. I ask for 7 minutes.

Mr. LEAHY. I see the distinguished senior Senator from California. How much time does she want?

Mrs. FEINSTEIN. I will take 1 additional minute; 8 minutes.

That was meant to be a joke.

Mr. LEAHY. I am trying to think how to react to that, considering the size of the State of Vermont—other than to say that when Vermont was admitted to the Union it had twice the population of California when California was admitted to the Union. Every day now California gains the population of Vermont.

Mr. President, I ask that 8 minutes of my time be given to the Senator from

New York and 8 minutes to the Senator from California, both of whom are valued members of the Senate Judiciary Committee.

Mr. CONRAD. Mr. President, will the manager of the bill and others who are waiting permit me 15 seconds to mention what has occurred?

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

The Senator from North Dakota.

Mr. CONRAD. Mr. President, I thank the manager of the bill for including the provisions that Senator BOND, myself, and Senator SNOWE authored to tighten our borders, to provide coordination with schools and employers when visa holders come to this country, to coordinate the work of our intelligence agencies with the INS and the State Department so we are confident of who is coming in, and to impose these new provisions using biometrics so we really know who is coming to our country.

I thank the managers very much, and I thank Senator BOND for his leadership.

Mr. LEAHY. Mr. President, I thank Senator BOND. I thank Senator CONRAD and Senator BYRD.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Thank you, Mr. President.

Mr. President, first, let me thank our senior Senator from Vermont and our senior Senator from Utah for their leadership on this bill; and also the many who have worked on it.

It is good that we have brought this bill in a timely fashion before the Senate. On the one hand, we didn't rush so much that we did the bill in a day or two. On the other hand, we didn't have a great need to wait in terms of security. I think it is coming to the floor at the right time with enough deliberation and care but at the same time not delaying too much because the security problems America faces are large and at times seem almost overwhelming.

If there is one key word that underscores this bill, it is "balance." In the new post-September 11 society that we face, balance is going to be a key word. Technology has forced us to recalibrate in many different ways. The technology that allowed these horrible people to do what they did to my city and to America and the technology that allows law enforcement to try to catch up with them changes rapidly. No law can sit still as that technology changes and still be effective.

The balance between the need to update our laws given the new challenges and the need to maintain our basic freedoms which distinguish us from our enemies is real.

There have been some on the right who have said just pass anything. We just have to go after the terrorists and forget about our freedoms and our civil liberties. There are some on the left who say only look at the civil liberties aspect. They are both wrong. Fortunately, neither prevailed in this fine piece of work that we have before us. Balance and reason have prevailed.

This is the Senate working at its best under a crisis situation but still with care and an appropriate degree of deliberation.

It is also an example of the two parties coming together, and of the administration and the Congress coming together. In a sense, in this bill there is something for everyone to like and something for everyone to dislike, which may well show that it will end up in the right place.

I would like to talk about a few parts of the bill. The trap-and-trace provision is basically a proposal that Senator KYL and I put together a couple years ago which is basically in the bill intact. It is vital. If you ask law enforcement what they need, they need a standard when they have somebody who is a terrorist or a potential terrorist, that would allow a wiretap to be made so they can find that person.

In the old days it was easy. It was not easy to get a new telephone. You had to go to the phone company to get one, and it would take a few weeks. Now people have cell phones; and anyone, for an illicit or bad purpose, can get a cell phone every day. In fact, we know some of the hijackers regularly bought new cell phones.

Without this new process, without nationalizing trap-and-trace authority so you can follow the numbers that are called—you still cannot look at content without going to a judge—law enforcement would be powerless. It still confounds me that a simple provision such as this, which does not change the balance but simply updates the technology we need, had been held up for so long. Fortunately, it is here now. Or unfortunately, it took an awful incident to make it happen.

Most of the terrorists—and other criminals as well: money launderers, drug dealers—are pretty technologically savvy. To put handcuffs on law enforcement so they cannot be as technologically savvy, would make no sense.

I was also proud to work on the money laundering provision. Law enforcement has often said: Show me the money, and I will show you the terrorists. Let's be honest about it. The money-laundering provision is not going to stop the flow of money completely to the terrorists. They can still have couriers and packets and things such as that. But what it does do, No. 1, is make it harder, and, No. 2, it gives us information, the ability to find information, and find the flow of who is connected to whom, how, where, why, and when.

Again, the late Senator Coverdell and I had a money-laundering bill that is not terribly different than the provisions in this bill. We had introduced it a couple years ago.

I see my friend from Michigan. He has come to the Chamber. He has done great work in relation to money laundering, as has the Senator from Massachusetts, and so many others.

As to information sharing, again, we need to share information more quickly and more rapidly among our various law enforcement agencies and between law enforcement and intelligence agencies.

When we are facing a war where it is more likely that more civilians will die than military personnel, the homefront is a warfront. The old high wall between foreign intelligence and domestic law enforcement has to be modified. The bill does a good job of that.

There is a provision that would improve communication between Federal law enforcement and local law enforcement, which Senator CLINTON and I believe needs tightening up. There were procedural, not substantive, objections raised to it. We hope to bring that measure back either as a freestanding measure or as part of some other legislation.

The other provisions in the bill are good as well. I believe in immigration. I think immigrants are great for America. But immigrants do not have the exact same rights as citizens. They never have, nor should they. To say that somebody who is not a U.S. citizen and might be suspicious should be detained for a short period of time while law enforcement checks them out—after all, they are trying to enter the country, which is a privilege, not a right—makes sense. To say they should be detained indefinitely without going to a judge cuts too far against the grain of the freedoms we have. Once again, this bill seeks a balance.

Finally, as to the sunset, I was very much opposed to the House 2-year sunset. How could we have law enforcement adapt to a new law knowing that by the time they get geared up, it is almost going to be sunsetted? In fact, I think you do it the other way. If a law is good, you put it on the books permanently, and then you reexamine it. You do not automatically have it off the books. That means you do not trust the product you put together.

Four years is about the minimum amount of time that would be acceptable to me. I thought 5 would be better, or, frankly, no sunset. Putting the burden of proof the other way would have made more sense, still. But a 4-year sunset, again, shows compromise.

Mr. President, I have said this in this Chamber before. In this new world in which we live, everyone has to give a little bit. We are asking our citizens to give a little bit. We are asking our Armed Forces to give a lot. And that applies to us as well.

I hope and pray—and I believe it has happened in this bill—there is a bit of a new attitude. Even if you cannot get everything your way, at least you give the benefit of the doubt to the compromise that has been put together because we have to move things forward, and this bill does that.

In conclusion, the scourge of terrorism is going to be with us for a while. Law enforcement has a lot of catching up to do. There is no question

about it. In this bill, at least, we give them fair and adequate tools that do not infringe on our freedoms but, at the same time, allows them to catch up a lot more quickly.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from California.

Mr. LEVIN. Mr. President, I wonder if the Senator from California would yield for a unanimous consent request.

Mrs. FEINSTEIN. I would be happy to yield.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I ask unanimous consent that after the remarks of the Senator from California, I be recognized for the time allotted to me.

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

Mr. LEVIN. I thank the Senator.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, Americans tend to be a very open people. Americans, to a great extent, have looked at Government, saying: Just leave me alone. Keep Government out of my life. At least that is the way it was before September 11. What I hear post-September 11 are people saying: What is my Government going to do to protect me?

As we look back at that massive, terrible incident on September 11, we try to ascertain whether our Government had the tools necessary to ferret out the intelligence that could have, perhaps, avoided those events. The only answer all of us could come up with, after having briefing after briefing, is we did not have those tools. This bill aims to change that. This bill is a bill whose time has come. This bill is a necessary bill. And I, as a Senator from California, am happy to support it.

This legislation brings our criminal and national security laws in line with developing technologies so that terrorists will no longer be able to stay one step ahead of law enforcement. And believe me, they can today.

Right now, for example, terrorists can evade Foreign Intelligence Surveillance Act wiretaps, which are device-specific, by simply switching cell phones every few hours. This legislation fixes that and allows for roving FISA wiretaps, the same as are currently allowed for suspected criminals under the domestic law enforcement portions of the law known as title III.

And because modern communications often travel through countless jurisdictions before reaching their final destination, investigators must now get court orders from every one of those jurisdictions. They can have to get 15, 20 court orders to carry out a wiretap. This bill would change that, allowing for just one court order from the originating jurisdiction.

And the bill recognizes that voice mails and e-mails should be treated alike when law enforcement seeks access to them. Technology, as it changes, changes the ability to conduct an intelligence surveillance. This bill attempts to keep a very careful balance between the personal right to privacy and the Government's right to know, in an emergency situation, to be able to protect its citizens.

It also increases information sharing between the intelligence community and law enforcement. As a matter of fact, it mandates it. Criminal investigations often result in foreign intelligence. This information, up to this point, is not shared with the intelligence community. After this bill becomes law, it must be shared.

And it makes it easier for law enforcement to defeat those who would use the computers of others to do mischief.

For example, with the Zombie computer, I invade your computer and, by invading your computer, go into 1,000 other computers and am able to get one of them to open the floodgates of a dam. This bill prevents that.

Overall, this bill gives law enforcement and the intelligence community the tools they need to go after what is an increasingly sophisticated terrorist element.

I am very pleased this legislation also includes a number of provisions I drafted with Senator GRAHAM well before the events on September 11—title 9 of this bill. These provisions give the Director of the CIA, as head of the intelligence community, a larger role with regard to the analysis and dissemination of foreign intelligence gathered under FISA. These mandate that law enforcement share information with the intelligence community.

And title 9 improves the existing Foreign Terrorist Asset Tracking Center which helps locate terrorist assets. It authorizes additional resources to help train local law enforcement to recognize and handle foreign intelligence.

We now have these anti-terrorist teams throughout the country. They need to be trained, and they need to learn the tools of the trade and get the security clearances so they can tap into these databases.

I agree with the 4-year sunset included for certain surveillance provisions in the bill. In committee I suggested a 5-year sunset. The House had 2 years. It is now 4 years. That is an appropriate time. It gives us the time to review whether there were any outrageous uses of these provisions or whether uses were appropriate under the basic intent of the bill.

Let me briefly touch on a related topic of great importance in the war against terrorism. As an outgrowth of the Technology, Terrorism, and Government Information Subcommittee, today Senator JON KYL of Arizona and I held a press conference indicating a bill we will shortly introduce to create a new, central database, a database that is a lookout database into which information from intelligence, from law enforcement, from all Federal agencies will go. That database will be for every visa holder, every person who crosses borders coming in and out of this country. The legislation will provide for "smart visa cards", reform the visa waiver program, reform the unregulated student program, and improve and beef up identity documents.

I passed around at the press conference a pilot's license, easily reproducible, no biometric data, no photograph, perforated around the edges showing that it had been removed from a bigger piece. This is the pilot's license that every 747 pilot carries, every private pilot carries. It is amazing to me that this can be a Federal document and be as sloppy as it is in this time.

We intend to see that identity documents are strengthened to provide not only photographs, but biometric data as well (such as fingerprints or facial recognition information). And the data system would be such that it is flexible and scalable so as biometric technology and requirements progress, the database can keep up.

Both Senator KYL and I also met with Larry Ellison, the CEO of Oracle. Oracle has stated that they are willing to devote some 1,500 engineers to develop a national identity database. What we are proposing is different from that. He said they would devote their software free of charge.

The PRESIDING OFFICER. The time of the Senator has expired.

Mrs. FEINSTEIN. If I may just have 1 minute to conclude.

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

Mrs. FEINSTEIN. We are not proposing a national identity card, but we do believe this kind of database could be prepared by a company such as Oracle—they have offered to give it to the Government for free or by NEC, which did a state-of-the-art fingerprint system for San Francisco. We believe this should be under the auspices of the Homeland Security Director, that these decisions need to be made rapidly, and that we need to get cracking to close the loopholes that have made the United States of America one giant sieve.

This bill, which I am so happy to support, takes a giant step forward in that direction. I thank both the chairman of the committee and the ranking member for their diligence on this bill.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, the antiterrorism bill which the Senate is about to pass reflects the sentiments the American people have expressed since the events of September 11—that we must act swiftly and strongly to defend our country without sacrificing our most cherished values. The Senate antiterrorism legislation meets that test. It responds to these dangerous times by giving law enforcement agencies important new tools to use in combating terrorism without denigrating

the principles of due process and fairness embedded in our Constitution.

The bill is not perfect. In fact, during the Senate's consideration of its bill, I supported three amendments offered by Senator FEINGOLD. Each of the Feingold amendments would have strengthened privacy protections for American citizens without undermining law enforcement efforts to investigate terrorists. One amendment would have maintained limits in Federal and State law on law enforcement access to personal records, particularly with regards to sensitive medical and financial information. A second amendment would have required law enforcement to ascertain that a surveillance target under the antiterrorism bill's expanded wiretap authority was actually in the house that was bugged or using the phone that was tapped before surveillance could be initiated. The third amendment that I supported would have placed sensible limits on the government's ability to intercept computer communications. Among these limits were the type of investigation and the length of surveillance in which the government could utilize new surveillance authority provided in the antiterrorism bill.

While the amendments I supported were not adopted the bill before us is much stronger from a civil liberties standpoint than the legislation that was initially proposed by the administration. This is due in large part to the strong commitment to civil liberties and the tireless efforts of Senate Judiciary Committee Chairman PATRICK LEAHY.

The bill also bolsters Federal criminal laws against terrorism in several important areas, including extending the statute of limitations for terrorist offenses and modernizing surveillance laws to permit investigators to keep pace with new technologies like cell phones and the Internet.

Michigan's economy and security depend on the Federal Government providing adequate resources for inspection and law enforcement at the State's northern border. I am pleased that the final bill now before us also includes significant new funding to increase security and improve traffic flow at the northern border.

Finally, this legislation includes a landmark set of provisions that I have been proud to sponsor that will strengthen and modernize U.S. anti-money laundering laws. Osama bin Laden has boasted that his modern new recruits know the "cracks" in "Western financial systems" like they know the "lines in their hands." Enactment of this bill will help seal the cracks that allow terrorists and other criminals to use our financial systems against us.

The final money laundering provisions appear in Title 3 of the bill and represent a significant advance over existing law. Here are some of the anti-money laundering provisions that I authored and that are included in the final bill.

For the first time, all U.S. financial institutions—not only banks but securities firms, insurance companies, money transmitters, and other businesses that transfer funds or engage in large cash transactions—will have a legal obligation to exercise due diligence before allowing a foreign financial institution to open a correspondent account with them and thereby gain entry into the U.S. financial system.

For the first time, U.S. banks and securities firms will be barred from opening accounts for foreign shell banks that have no physical presence anywhere and no affiliation with another bank.

For the first time, U.S. prosecutors will be able to freeze and seize a depositor's funds in a foreign financial institution's correspondent account to the same extent under civil forfeiture laws as a depositor's funds in other U.S. financial accounts.

For the first time, foreign corruption offenses such as bribery and misappropriation of funds by a public official will qualify as predicate offenses that can trigger a U.S. money laundering prosecution.

Still other provisions in the bill give U.S. law enforcement a host of new tools to investigate and prosecute money laundering crimes, especially crimes involving a foreign financial institution.

Here are some of the other key provisions in the bill that make landmark changes in U.S. anti-money laundering laws.

For the first time, all U.S. financial institutions will have a legal obligation to verify the identity of their customers, and all customers will have a legal obligation to tell the truth about who they are.

For the first time, all U.S. financial institutions will be required to have anti-money laundering programs.

For the first time, the U.S. Treasury Secretary will have legal authority to designate specific foreign financial institutions, jurisdictions, transactions or accounts as a "primary money laundering concern" and use special measures to restrict or prohibit their access to the U.S. marketplace.

For the first time, bulk cash smuggling over U.S. borders will be a prosecutable crime, and suspect funds will be subject to forfeiture proceedings.

Just like we are tightening our border controls to restrict access to the United States across its physical borders, the bill's anti-money laundering provisions will tighten our financial controls to restrict access into the U.S. financial system. They will require our financial institutions to take new steps, to do more work, and to exercise greater caution before opening up the financial system of the United States.

When the anti-money laundering provisions first passed the Senate on October 11, I gave a floor statement explaining a number of the provisions that had been taken from the Levin-Grassley anti-money laundering bill, S. 1371. While I do not want to repeat all of that legislative history here, some important improvements were made during the House-Senate negotiations that I would like to comment on in order to explain their intent and impact.

First is the shell bank ban in Section 313 of the final bill. That provision appeared in both the House and Senate bills, with only a few differences. The primary difference is that the House provision applied only to "depository institutions," while the Senate bill was intended to ban both U.S. banks and U.S. securities firms from opening accounts for shell banks. The final bill takes the broader approach advocated by the Senate and applies the shell bank ban to both U.S. banks and U.S. securities firms. This broader ban is intended to make sure that neither U.S. banks nor U.S. securities firms open accounts for shell banks, which carry the highest money laundering risks in the banking world. This broader ban means, for example, that a bank that had shell banks as clients and was required to close those accounts under this provision would not be able to circumvent the ban simply by switching its shell bank clients to accounts at an affiliated broker-dealer. The goal instead is to close off the U.S. financial system to shell banks and institute a broad ban on shell bank accounts.

In my floor statement of October 11, I explained the related requirement in Section 313 that U.S. financial institutions take reasonable steps to ensure that other foreign banks are not allowing their U.S. accounts to be used by shell banks. The purpose of this language is to prevent shell banks from getting indirect access to the U.S. financial system by operating through a correspondent account belonging to another foreign bank. That requirement was included in both the House and Senate bills, and in the final version of the legislation. It is a key provision because it will put pressure on all foreign financial institutions that want to do business in the United States to cut off the access that shell banks now enjoy in too many countries around the world.

I also explained on October 11 that the shell bank ban contains one exception that is intended to be narrowly construed to protect the U.S. financial system from shell banks to the greatest extent possible. This exception, which is identical in both the House and Senate bills and is unchanged in the final version of the legislation, allows U.S. financial institutions to open an account for a shell bank that meets two tests: the shell bank is affiliated with another bank that maintains a physical presence, and the shell bank is subject to supervision by the banking regulator of that affiliated bank. The intent of this exception is to allow U.S. financial institutions to do business with shell branches of large, established banks on the understanding that the bank regulator of the large, established bank will also supervise the established bank's branch offices worldwide, including any shell branch. As explained in my earlier floor statement, U.S. financial institutions are cautioned not to abuse this exception, to exercise both restraint and common sense in using it, and to refrain from doing business with any shell operation that is affiliated with a poorly regulated bank.

The House-Senate negotiations also added a new provision to Section 313 giving U.S. financial institutions a 60-day period to wind up and close any existing accounts for shell banks and to institute the reasonable procedures called for to ensure that other correspondent accounts with foreign financial institutions are not being used by shell banks. As I suggested on October 11, one possible approach with respect to other correspondent accounts would be for the U.S. financial institution to develop standard language asking the foreign financial institution to certify that it is not and will not allow any shell bank to use its U.S. accounts and then to rely on that certification absent any evidence to the contrary.

A second provision I want to discuss in detail is the due diligence requirement in Section 312 of the final bill. This provision also appeared in both the House and Senate bills, again with only a few differences in wording. This provision is intended to tighten U.S. anti-money laundering controls by requiring all U.S. financial institutions to exercise due diligence when opening or managing correspondent or private banking accounts for foreign financial institutions or wealthy foreign individuals. The purpose of this requirement is to function as a preventative measure to stop rogue foreign financial institutions, terrorists or other criminals from using U.S. financial accounts to gain access to the U.S. financial system.

The most important change made to the due diligence requirement during the House-Senate negotiations was to make the definitional provisions in section 311 also apply to section 312. Specifically, the House and Senate negotiators amended what is now Section 311(e) to make sure that its provisions would be applied to both the new 31 U.S.C. 5318A and the new subsections (i) and (j) of 31 U.S.C. 5318 created by Sections 311, 312 and 313 of the final bill.

As I mentioned in my floor statement on October 11, one of the key changes that the Senate Banking Committee made to the due diligence requirement when they took that provision from the Levin-Grassley bill, S. 1371, was to make the due diligence requirement apply to all U.S. financial institutions, not just banks. The Banking Committee expanded the scope of the due diligence requirement by deleting the Levin-Grassley references to "banks" and substituting the term "financial institutions" which, in Section 5312(a)(2) of the Bank Secrecy Act, includes not only banks, but also securities firms, insurance companies, money exchanges, and many other businesses that transfer funds or carry out large cash transactions. The House Financial Services Committee adopted the same approach as the Senate Committee, using the term "financial institution" in its due diligence provision rather than, for example, the term "depository institution" which the House Committee used in its version of the shell bank ban. The bottom line, then, is that both the House and Senate expanded the due diligence provision to apply to all U.S. financial institutions, not just banks.

During the House-Senate negotiations on the final version of the anti-money laundering legislation, Section 311(e) of the bill was amended to make it applicable to both the due diligence requirement created by Section 312 and to the shell bank ban created by Section 313. Section 311(e) establishes several new definitions for such terms as "account" and "correspondent account," and also directs or authorizes the Treasury Secretary to issue regulations to clarify other terms. By making those definitions and regulatory authority applicable to the due diligence requirement and shell bank ban, the House-Senate negotiators helped ensure that the same terms would be used consistently across Sections 311, 312 and 313. In addition, the change helps clarify the scope of the due diligence and shell bank provisions in several respects.

First, the change makes the definition of "account" applicable to the due diligence requirement. This definition makes it clear that the due diligence requirement is intended to apply to a wide variety of bank accounts provided to foreign financial institutions or private banking clients, including checking accounts, savings accounts, investment accounts, trading accounts, or accounts granting lines of credit or other credit arrangements. The clear message is that, before opening any type of account for a foreign financial institution or a wealthy foreign individual and giving that account holder access to the United States financial system, U.S. financial institutions must use due diligence to evaluate the money laundering risk, to detect and report possible instances of money laundering, and to deny access to terrorists or other criminals.

The definition also ensures that the shell bank ban applies widely to bar a shell bank from attempting to open virtually any type of financial account available at a U.S. financial institution.

Second, the change makes it clear that the definition of "correspondent account" applies to the due diligence requirement. This clarification is important, because the definition makes it clear that "correspondent accounts" are not confined to accounts opened for foreign banks, as specified in S. 1371, but encompass accounts opened for any "foreign financial institution." This broader reach is in keeping with the effort of the Senate Banking Committee and the House Financial Services Committee to expand the due diligence requirement to apply to all financial institutions, not just banks. It means, for example, that U.S. financial institutions must use due diligence when opening accounts not only for foreign banks, but also for foreign securities firms, foreign insurance companies, foreign exchange houses, and other foreign financial businesses.

Section 311(e)(4) authorizes the Treasury Secretary to further define terms used in subsection (e)(1), and Treasury may want to use that authority to issue regulatory guidance clarifying the scope of the term "foreign financial institution" to help U.S. financial institutions understand the extent of their due diligence obligation under the new 31 U.S.C. 5318(i). In fashioning this regulatory guidance, Treasury should keep in mind the intent of Congress in issuing this new due diligence requirement—to require all U.S. financial institutions to use greater care when allowing any foreign financial institution inside the U.S. financial system.

The significance of applying the "correspondent account" definition to the shell bank ban is, again, to ensure that the ban applies widely to bar a shell bank from opening virtually any type of financial account available at a U.S. financial institution.

Third, due to the change made by House-Senate negotiators, Section 311(e)(3) directs the Treasury Secretary to issue regulations defining "beneficial ownership of an account" for purposes of both the new 31 U.S.C. 5318A and the new subsections (i) and (j) of 31 U.S.C. 5318. How the regulations define "beneficial ownership" will have profound implications for these new provisions as well as for other aspects of U.S. anti-money laundering laws. Section 311(e)(3) directs Treasury to address three sets of issues in defining beneficial ownership: the significance of "an individual's authority to fund, direct, or manage the account"; the significance of "an individual's material interest in the income or corpus of the account"; and the exclusion of individuals whose beneficial interest in the income or corpus of the account is immaterial."

The issue of beneficial ownership is at the heart of the fight against terrorists and other criminals who want to use our financial institutions against us. Terrorists and other criminals want to hide their identity as well as the criminal origin of their funds so that they can use their U.S. accounts without alerting law enforcement. They want to use U.S. and international payment systems to move their funds to their operatives with no questions asked. They want to deposit their funds in interest-bearing accounts to

increase the financial resources available to them. They want to set up credit card accounts and lines of credit that can be used to finance their illegal activities. Above all, they do not want U.S. financial institutions determining who exactly is the owner of their accounts, since that information can lead to closure of the accounts, seizure of assets, exposure of terrorist or criminal organizations, and other actions by law enforcement.

After the September 11 attack, it is more critical than ever that U.S. financial institutions determine exactly who is the beneficial owner of the accounts they open. Another provision of the final bill, Section 326 which was authored by House Financial Services Committee Chairman OXLEY, requires financial institutions to verify the identify of their customers. That provision gets at the same issue that our financial institutions need to know who they are dealing with and who they are performing services for.

Some financial institutions have pointed out the difficulties associated with determining the beneficial owner of certain accounts. But these are not new issues, and they can be dealt with in common sense ways. U.S. tax administrators and financial regulators have years of experience in framing ownership issues. Switzerland has had a beneficial ownership requirement in place for years, and in fact requires accountholders to sign a specific document, called "Form A," declaring the identify of the account's beneficial owner. The difficulties associated with determining beneficial ownership can be addressed.

There will, of course, be questions of interpretation. No one wants financial institutions to record the names of the stockholders of publicly traded companies. No one wants financial institutions to identify the beneficiaries of widely held mutual funds. That is why this section directs the Treasury Secretary to issue regulatory guidance in this area.

At the same time, there are those who are hoping to convince Treasury to turn the definition of beneficial ownership inside out, and declare that attorneys or trustees or asset managers who direct payments into or out of an account on behalf of unnamed parties can somehow qualify as the "beneficial owner of the account." Others will want to convince Treasury that offshore shell corporations or trusts can qualify as the beneficial owner of the accounts they open. But those are exactly the types of accounts that terrorists and criminals use to hide their identities and infiltrate U.S. financial institutions. And those are exactly the accounts for which U.S. financial institutions need to verify and evaluate the real beneficial owners.

The beneficial ownership regulation will be a challenging undertaking. But there is plenty of expertise to draw upon, from FATF, the Basel Committee, U.S. financial and tax regulators, other countries with beneficial ownership requirements and, of course, from our own financial community.

Fourth, Section 311(a)(2) directs the Treasury Secretary to issue regulations clarifying how the term "account" applies to financial institutions other than banks. This authority should be read in conjunction with Section 311(e)(4) which allows, but does not require, the Secretary to issue regulations defining other terms in the new 31 U.S.C. 5318A and the new subsections (i) and (j) of 31 U.S.C. 5318. These two regulatory sections should, in turn, be read in conjunction with Section 312(b)(1) which directs the Secretary to issue regulations further clarifying the due diligence policies, procedures and controls required under that section. Together, these grants of regulatory authority provide the Treasury Secretary with ample authority to issue regulatory guidance to help different types of financial institutions understand what is expected of them in the area of due diligence. Such guidance may be needed by banks, securities firms, insurance companies, exchange houses, money service businesses and other financial institutions. The guiding principle, again, is to ensure that U.S. financial institutions exercise appropriate due diligence before opening accounts for foreign financial institutions or wealthy foreign individuals seeking access to the U.S. financial system.

These grants of regulatory authority can also be used by Treasury to ensure that the shell bank ban established by Section 313 is as broad and effective as possible to keep shell banks out of the U.S. financial system.

Next is due diligence and correspondent banking. Section 312 imposes an ongoing, industry-wide legal obligation on all types of financial institutions operating in the United States to exercise appropriate care when opening and operating correspondent accounts for foreign financial institutions to safeguard the U.S. financial system from money laundering. The general obligation to establish appropriate and specific due diligence policies, procedures and controls when opening correspondent accounts is codified in a new 31 U.S.C. 5318(i)(1).

Subsection 5318(i)(2) specifies additional, minimum standards for enhanced due diligence policies, procedures and controls that must be established by U.S. financial institutions for correspondent accounts opened for two specific categories of foreign banks: banks operating under offshore banking licenses and banks operating in foreign countries that have been designated as raising money laundering concerns. These two categories of foreign banks were identified due to their higher money laundering risks, as explained in the extensive staff report and hearing record of the Permanent Subcommittee on Investigations, copies of which I released earlier this year.

Subsection 5318(i)(2) provides two alternative ways in which a foreign country can be designated as raising money laundering concerns. The first way is if a country is formally designated by an intergovernmental group or organization of which the United States is a member. Currently, the most well known such group is the Financial Action Task Force on Money Laundering, also known as FATF, which is composed of about 30 countries and is the leading international group fighting money laundering. In 2000, after a lengthy fact-finding and consultative process, FATF began issuing a list of countries that FATF's member countries formally agreed to designate as noncooperative with international anti-money laundering principles and procedures. This list, which names between 12 and 15 countries, is updated periodically and has become a powerful force for effecting change in the listed jurisdictions. The second way a country may be designated for purposes of the enhanced due diligence requirement is if the country is so designated by the Treasury Secretary under the procedures provided in the new Section 5318A. This second alternative enables the United States to act unilaterally as well as multilaterally to require U.S. financial institutions to take greater care in opening correspondent accounts for foreign banks in jurisdictions of concern.

The House and Senate bills contained one minor difference in the wording of the provision regarding foreign country designations by an intergovernmental group or organization under the new 31 U.S.C. 5318(i)(2)(A)(ii)(I). The House bill included a phrase, not in the Senate bill, stating that the foreign country designation had to be one with which the Secretary of Treasury concurred, apparently out of concern that an intergovernmental group or organization might designate a country as noncooperative over the objection of the United States. The final version of the provision includes the House approach, but uses statutory language making it clear that U.S. concurrence in the foreign country designation may be provided by the U.S. representative to the relevant international group or organization, whether or not that representative is the Secretary of Treasury or some other U.S. official.

The new 31 U.S.C. 5318(i)(2) states that the enhanced due diligence policies, procedures and controls that U.S. financial institutions must establish for correspondent accounts with offshore banks and banks in jurisdictions designated as raising money laundering concerns must include at least three elements. They must require the U.S. financial institution to ascertain the foreign bank's ownership, to carefully monitor the account to detect and report any suspicious activity, and to determine whether the foreign bank is allowing any other banks to use its U.S. correspondent account and, if so, the identity of those banks and related due diligence information.

The three elements specified in Section 5318(i)(2) for enhanced due diligence policies, procedures and controls are not meant to be comprehensive. Additional reasonable steps would be appropriate before opening or operating accounts for these two categories of foreign banks, including steps to check the foreign bank's past record and local reputation, the jurisdiction's regulatory environment, the bank's major lines of business and client base, and the extent of the foreign bank's anti-money laundering program. Moreover, other categories of foreign financial institutions will also require use of enhanced due diligence policies, procedures and controls including, for example, offshore broker-dealers or investment companies, foreign money exchanges, foreign casinos, and other foreign money service businesses.

Now I would like to discuss due diligence and private banking. The new Section 5318(i) also addresses due diligence requirements for private banking accounts. The private banking staff report issued by the Permanent Subcommittee on Investigations explains why these types of private banking accounts are especially vulnerable to money laundering and why initial and ongoing due diligence reviews are needed to detect and report any suspicious activity.

The House and Senate versions of this provision were very similar. The primary difference between them is that the House bill included a definition of "private banking accounts" that originally appeared in the Levin-Grassley bill, S. 1371, while the Senate left the term undefined. The final version of Section 5318(i) includes the House definition. It has three elements. First, the account in question must require a $1 million minimum aggregate of deposits. Second, the account must be opened on behalf of living individuals with a direct or beneficial ownership interest in the account. Third, the account must be assigned to, administered, or managed in part by, a financial institution employee such as a private banker, relationship manager or account officer. The purpose of this definition is to require U.S. financial institutions to exercise due diligence when opening and operating private banking accounts with large balances controlled by wealthy foreign individuals with direct access to the financial professionals responsible for their accounts.

U.S. financial institutions with private banking accounts are required by the new Section 5318(i)(1) to establish appropriate and specific due diligence policies, procedures and controls with respect to those accounts. Section 5318(i)(3) states that, at a minimum, the due diligence policies, procedures and controls must include reasonable steps to ascertain the identity of the accountholders, including the beneficial owners; to ascertain the source of funds deposited into the account; and to monitor the account to detect and report any suspicious activity. If the account is opened for or on behalf of a senior foreign political figure or a close family member or associate of the political figure, the U.S. financial institution must use enhanced due diligence policies, procedures and controls with respect to that account, including closely monitoring the account to detect and report any transactions that may involve the proceeds of foreign corruption. The enhanced due diligence requirements for private banking accounts involving senior foreign political figures are intended to work in tandem with the guidance issued on this subject by Treasury and federal banking regulators in January 2001.

The accounts covered by the private banking definition are not confined to accounts at U.S. banks, but also cover accounts opened at other types of financial institutions, including securities firms which have developed lines of business offering similar types of accounts to wealthy foreign individuals. In addition, the section is intended to cover not only private banking accounts physically located inside the United States, but also private banking accounts that are physically located outside of the United States but managed by U.S. personnel from inside the United States. For example, the private banking investigation conducted by my Subcommittee found that it was a common practice for some U.S. private banks to open private banking accounts for foreign clients in an offshore or bank secrecy jurisdiction, but then to manage those accounts using private bankers located inside the United States. In such cases, the U.S. financial institution is required to exercise the same degree of due diligence in opening and managing those private banking accounts as it would if those accounts were physically located within the United States.

Another area of inquiry involves the $1 million threshold. Some financial institutions have asked whether the $1 million minimum would be met if an account initially held less than the required threshold, or the account's total deposits dipped below the threshold amount on one or more occasions, or the same individual held accounts both inside and outside the private bank and kept the private bank account's total deposits below the threshold amount. Such inquires are reminiscent of structuring efforts undertaken to avoid certain anti-money laundering reporting requirements. Such structuring efforts have not been found acceptable in avoiding other anti-money laundering requirements, and the language of the private banking provision is intended to preclude such maneuvering here.

The purpose of the private banking provision is to require U.S. financial institutions to exercise due diligence when opening or managing accounts with large deposits for wealthy foreign individuals who can use the services of a private banker or other employee to move funds, open offshore corporations or accounts, or engage in other financial transactions that carry money laundering risks. Because it is the intent of Congress to strengthen due diligence controls and protect the U.S. financial system to the greatest extent possible in the private banking area, the private banking definition should be interpreted in ways that will maximize the due diligence efforts of U.S. financial institutions.

Finally, the House-Senate negotiators adjusted the effective date of the due diligence provision. The new effective date gives the Treasury Secretary 180 days to issue regulations clarifying the due diligence policies, procedures and controls required under the new 31 U.S.C. 5318(i). These regulations are, again, intended to provide regulatory guidance to the range of U.S. financial institutions that will be compelled to exercise due diligence before opening a private banking or correspondent banking account. Section 312(b) states that, whether or not the Treasury Secretary meets the 180-day deadline for regulations, the due diligence requirement will go into effect no later than 270 days after the date of enactment of the legislation. That means, whether or not the Treasury Secretary issues any regulations, after 270 days, U.S. financial institutions will be legally required to establish appropriate and specific due diligence policies, procedures and controls for their private banking and correspondent accounts, including enhanced due diligence policies, procedures and controls where necessary.

In addition to due diligence and the Shell Bank provisions, my October 11 floor statement discusses several other bill provisions including those that add foreign corruption offenses to the list of crimes that can trigger a U.S. money laundering prosecution, and those that close a forfeiture loophole applicable to correspondent accounts for foreign financial institutions. I will not repeat that legislative history again, but I do want to mention one other provision that I authored to expand use of Federal receivers in money laundering and forfeiture proceedings.

The Federal receivers provision is contained in Section 317 of the final bill, and I want to make three points about it. First, this provision comes out of the work of the Permanent Subcommittee on Investigations which found that many money laundering crimes include such complex flows of money across international lines that the average prosecutor does not have the time or resources needed to chase down the money, even when that money represents savings stolen or defrauded from hundreds of crime victims in the United States. In too many money laundering cases, the crime victims will never see one dime of their lost savings. The Federal receiver provision in Section 317 is intended to provide Federal prosecutors and the Federal and State regulators working with

them the option of using a court-appointed receiver to chase down the laundered funds.

Second, the provision is intended to allow any U.S. district court to appoint a Federal receiver in a money laundering or forfeiture proceeding, whether criminal or civil, if so requested by the Federal prosecutor or Federal or State regulator associated with the proceeding. The only restriction is that the court must have jurisdiction over the defendant whose assets the receiver will be pursuing. Jurisdiction may be determined in the context of the criminal or civil proceeding before the court, including under new language in other parts of Section 317 making it clear that a district court has jurisdiction over any foreign financial institution that has a correspondent account at a U.S. financial institution; over any foreign person who has committed a money laundering offense involving a financial transaction occurring in whole or in part in the United States; and over any foreign person that has converted to their own use property that is the subject of a U.S. forfeiture order, as happened in the Swiss American Bank case described in the Subcommittee's staff report.

The third point about the Federal receiver provision is that it is intended to make it clear that Federal receivers appointed under U.S. money laundering laws may make requests and may obtain financial information from the U.S. Financial Crimes Enforcement Network in Treasury and from foreign countries as if the receiver were standing in the shoes of a federal prosecutor. This language is essential to increase the effectiveness of receivers who often have to work quickly, in foreign jurisdictions, in cooperation with foreign law enforcement and financial regulatory personnel, and who need clear statutory authority to make use of international information sharing arrangements available to assist U.S. law enforcement. The provision is intended to make it clear that the Federal receiver has the same access to international law enforcement assistance as a Federal prosecutor would if the prosecutor were personally attempting to recover the laundered funds. The language is also intended to make it clear that Federal receivers are bound by the same policies and procedures that bind all Federal prosecutors in such matters, and that Federal receivers have no authority to exceed any restrictions set by the Attorney General.

Finally, I would like to take note of two other provisions that are included in the final bill. They are Section 352 authored by Senate Banking Committee Chairman SARBANES to require all U.S. financial institutions to establish anti-money laundering programs, and Section 326 authored by House Financial Services Committee Chairman OXLEY to require all U.S. financial institutions to verify the identity of their customers. Both are strong requirements that apply to all U.S. financial institutions and, in the case of the Oxley provision, to all financial accounts. Both represent important advances in U.S. anti-money laundering laws by codifying basic anti-money laundering requirements. I commend my colleagues for enacting these basic anti-money laundering controls into law and filling in some of the gaps that have made our anti-money laundering safeguards less comprehensive than they need to be.

The clear intention of both the House and the Senate bills, and the final bill being enacted by Congress today, is to impose anti-money laundering requirements across the board that reach virtually all U.S. financial institutions. Congress has determined that broad anti-money laundering controls applicable to virtually all U.S. financial institutions are needed to seal the cracks in our financial systems that terrorists and other criminals are all too ready to exploit.

There are many other noteworthy provisions of this legislation, from requirements involving legal service of subpoenas on foreign banks with U.S. accounts, to new ways to prosecute money laundering crimes, to new arrangements to increase cooperation among U.S. financial institutions, regulators and law enforcement to stop terrorists and other criminals from gaining access to the U.S. financial system. There just is not sufficient time to go into them all.

To reiterate, the antiterrorism bill we have before us today would be very incomplete—only half of a toolbox—without a strong anti-money-laundering title to prevent foreign terrorists and other criminals from using our financial institutions against us. With the anti-money-laundering provisions in this bill, the antiterrorism bill gives our enforcement authorities a valuable set of additional tools to fight those who are attempting to terrorize this country.

Osama bin Laden has boasted that his modern new recruits know, in his words, the "cracks" in "Western financial systems" like they know the "lines in their own hands." Enactment of this bill with these provisions will help seal those cracks that allow terrorists and other criminals to use our own financial systems against us.

The intention of this bill is to impose anti-money-laundering requirements across the board that reach virtually all U.S. financial institutions.

Our Permanent Subcommittee on Investigations, which I chair, spent 3 years examining the weaknesses and the problems in our banking system with respect to money laundering by foreign customers, including foreign banks. Through 6 days of hearings and 2 major reports, one of which contained case studies on 10 offshore banks, we developed S. 1371 to strengthen our anti-money-laundering laws. A strong bipartisan group of Senators joined me in pressing for its enactment, including Senators GRASSLEY, SARBANES, KYL, DEWINE, BILL NELSON, DURBIN, STABENOW, and KERRY.

The major elements of S. 1371 are part of the legislation we are now considering.

Finally, Mr. President, I want to give a few thank-yous. First, I thank Senator SARBANES, chairman of the Senate Banking Committee. He saw the significance of the money laundering issue in the fight against terrorism, and I thank him for his quick action, his bipartisan inclusive approach, and his personal dedication to producing tough, meaningful legislation. I also thank him for allowing my staff to participate fully in the negotiations to reconcile the anti-money-laundering legislation passed by the House and the Senate.

I extend my thanks and congratulations to the Senate Banking Committee and the House Financial Services Committee for a fine bipartisan product that will strengthen, modernize, and revitalize U.S. anti-money-laundering laws. Congressman OXLEY and Congressman LAFALCE jumped right into the issue, committed themselves to producing strong legislation, and did the hard work needed to produce it. The negotiations were a model of House-Senate collaboration, with bipartisan, productive discussions leading to a legislative product that is stronger than the legislation passed by either House and which is legislation in which this Congress can take pride.

I also extend my thanks to Senator DASCHLE, Senator LOTT, and Senator LEAHY for taking the actions that were essential to ensure that the anti-money-laundering title was included in the antiterrorism bill. Senator DASCHLE made it very clear that without these provisions no antiterrorism bill would be complete. Senator LEAHY took actions of all kinds to make sure that, in fact, the anti-money laundering provisions were included in the final bill.

I thank Senator GRASSLEY who joined me in this effort early on and who worked with me every step of the way win enactment of the anti-money laundering legislation into law.

Senator STABENOW I thank for her quick and decisive action during the Banking Committee's consideration of this bill. Without her critical assistance, we would not be where we are today. I also thank Senator KERRY for his consistent, strong and informed role in fashioning this landmark legislation.

Finally I want to give a few thank-yous to staff. Elise Bean of my staff first and foremost deserves all of our thanks for her heroic efforts on this legislation. She and Bob Roach of our Subcommittee staff led the Subcommittee investigations into money laundering and did very detailed work on private banking and correspondent banking that laid the groundwork for the legislation we are passing today. I want to thank them both.

I want to thank Bill Olson of Senator GRASSLEY's office for jumping in whenever needed and lending strong support to this legislative effort. Similar thanks go to John Phillips of Senator KERRY's office who was there at all hours to make sure this legislation happened.

Similar thanks go to Senator SARBANES' staff on the Senate Banking Committee—especially Steve Harris, Marty Gruenberg, Patience Singleton and Steve Kroll, who put in long hours, maintained a high degree of both competency and professionalism, and provided an open door for my staff to work with them.

I also want to thank the staff of the House Financial Services Committee—Ike Jones, Carter McDowell, Jim Clinger and Cindy Fogleman. They put in long hours, knew the subject, and were dedicated to achieving a finished product of which we could all be proud.

Our thanks also go to Laura Ayoud of the Senate Legislative Counsel's office who literally worked around the clock during the negotiations on this legislation and, through it all, kept a clear eye and a cheerful personality. Her work was essential to this product.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. SARBANES. Before I make my statement and before Senator LEVIN leaves the floor, I wish to acknowledge the very substantial contribution that Senator LEVIN made to the money-laundering title that is in this bill, which I think is an extremely important title. In fact, you can't watch any program on television that has experts talking about what we ought to be doing with respect to this terrorism challenge when either the first or second thing they mention is to dry up the financial sources of the terrorists, and that, of course, comes right back to the money laundering.

Senator LEVIN, over a sustained period of time, in the government operations committee, held some very important hearings, issued very significant reports, and formulated a number of recommendations. This title is, in part, built on the recommendations that Senator LEVIN put forward at an earlier time. I simply acknowledge his extraordinary contribution to this issue. I acknowledge Senator KERRY as well. There were two proposals. They both had legislation in them and we used those as building blocks in formulating this title. We think it is a very strong title and that it can be a very effective tool in this war against terrorism, and against drugs, and against organized crime. It should have been done a long time ago, but it is being done now.

Before the able Senator from Michigan leaves the floor, I thank him and acknowledge his tremendous contribution.

Mr. LEVIN. Again, I thank Senator SARBANES for his great leadership, along with Senator LEAHY, which made this possible.

Mr. SARBANES. Mr. President, I rise in very strong support of this legislation. In particular, title III, the International Money Laundering Abatement and Financial Antiterrorism Act, which was included as part of the antiterrorism legislation. Of course, that bill was approved yesterday by the House of Representatives and will be approved very shortly by this body.

Title III represents the most significant anti-money-laundering legislation in many, many years—certainly since money laundering was first made a crime in 1986. The Senate Committee on Banking, Housing, and Urban Affairs, which I have the privilege of chairing, marked up and unanimously approved the key anti-money-laundering provisions on October 4. Those provisions were approved unanimously, 21–0. Those were approved as Title III of S. 1510, the Uniting and Strengthening America Act on October 11 by a vote of 96–1. H.R. 3004, the Financial Antiterrorism Act, which contained many of the same provisions and added important additional provisions, passed the House of Representatives by a vote of 412–1 on October 17.

Title III of this conference report represents a skillful melding of the two bills and is a result of the strong contribution made by House Financial Services Committee and chairman MICHAEL OXLEY and ranking member JOHN LAFALCE, working with Senator GRAHM, the ranking member of the Senate committee, and myself.

President Bush said on September 24, when he took executive branch action on the money-laundering issue:

> We have launched a strike on the financial foundation of the global terror network.

Title III of our comprehensive antiterrorism package supplies the armament for that strike on the financial foundation of the global terror network. Terrorist attacks require major investments of time, planning, training, practice, and financial resources to pay the bills. Osama bin Laden may have boasted, "Al-Qaida includes modern, educated youth who are as aware of the cracks inside the Western financial system as they are aware of the lines in their hands," but with title III, we are sealing up those cracks.

Money laundering is the transmission belt that gives terrorists the resources to carry out their campaigns of carnage, but we intend, with the money-laundering title of this bill, to end that transmission belt in its ability to bring resources to the networks that enable terrorists to carry out their campaigns of violence.

I need not bring to the attention of my colleagues the fact that public support across the country for anti-money-laundering legislation is extremely strong. Jim Hoagland put it plainly in the Washington Post:

> This crisis offers Washington an opportunity to force American and international banks to clean up concealment and laundering practices they now tolerate or encourage, and which terrorism can exploit

This legislation takes up that challenge in a balanced and forceful way.

Title III contains, among other provisions, authority to take targeted action against countries, institutions, transactions, or types of accounts the Secretary of the Treasury finds to be of primary money-laundering concern.

It also contains critical requirements of due diligence standards directed at correspondent accounts opened at U.S. banks by foreign offshore banks and banks in jurisdictions that have been found to fall significantly below international anti-money-laundering standards.

It prohibits U.S. correspondent accounts for offshore shell banks, those banks that have no physical presence or employees anywhere and that are not part of a regulated and recognized banking company.

The title also contains an important provision from the House bill that requires the issuance of regulations requiring minimum standards for verifying the identity of customers opening and maintaining accounts at U.S. financial institutions, and it very straightforwardly requires all financial institutions to establish appropriate anti-money-laundering programs.

Title III also includes several provisions to enhance the ability of the Government to share more specific information with banks, and the ability of banks to share information with one another relating to potential terrorist or money-laundering activities.

In addition, it provides important technical improvements in anti-money-laundering statutes, existing statutes, and mandates to the Department of the Treasury to act or formulate recommendations to improve our anti-money-laundering programs.

This is carefully considered legislation. While the committee moved expeditiously, its movement was based upon and reflects the efforts which have been made over a number of years on this issue.

As I indicated earlier, Senator CARL LEVIN, Senator KERRY, and in addition, Senator CHARLES GRASSLEY have led farsighted efforts to keep money-laundering issues on the front burner. Others in the Congress have also been involved with this issue over time. The House Banking Committee, under the leadership of then-Chairman JIM LEACH and ranking member JOHN LAFALCE, approved a money-laundering bill in June of 2000 by a vote of 31–1. It was very similar to the legislation introduced by Senator KERRY.

As the successor to Congressman LEACH, House Financial Services Chairman OXLEY has continued the commitment to fighting money launderers to maintain the integrity of our financial system and, now, to help ensure the safety of our citizens.

We have been guided in our work by the testimony presented to the committee on September 26. We heard from a number of expert witnesses, and from the Under Secretary of the Treasury

Gurule, Assistant Attorney General Chertoff, and Ambassador Stuart Eizenstat, the former Deputy Secretary of the Treasury. All of the witnesses advocated stronger and more modern money-laundering laws.

Before describing the provisions of Title III in greater detail, I want to single out a number of our colleagues and their staffs for their extraordinary contributions.

I have already spoken about House Financial Services Committee Chairman OXLEY and ranking member LAFALCE, but I want to note their personal willingness and that of their staffs to work overtime to ensure that the House and Senate reached agreement on this important legislation. In fact, last week when the office buildings were closed down, we met here in a room in the Capitol on Wednesday evening, well beyond midnight, and resumed early the next morning and continued throughout the day on Thursday, finally resolving all of our issues by the end of that afternoon.

I am truly grateful to all the members of the Senate Banking Committee for their strong, positive, and constructive contributions to the Senate-approved version of Title III. I indicated it was approved by the committee on a 21–0 vote. Ranking member Senator GRAMM provided critical support.

Senators STABENOW, JOHNSON, and HAGEL were instrumental in producing a compromise to resolve a dispute over one of the package's most important provisions.

Senator EDZI brought his expertise as an accountant to bear in refining another critical provision.

Senator SCHUMER, who has been involved in past efforts to address money-laundering activities, played an important role, as did Senators DODD, BAYH, CARPER, CORZINE, ALLARD, and CRAPO who either offered amendments or made other important contributions for improvements in this title.

I also want to take a moment to recognize those members of our staff who devoted so many hours to crafting this important and comprehensive legislation, literally all night in a couple of instances along the way in the legislative process: Steve Kroll, Patience Singleton, Steve Harris, Lynsey Graham, Vince Meehan, Marty Gruenberg, and Jesse Jacobs on the Banking Committee's majority staff. And on the Banking Committee's minority staff, I want to understore the work of Wayne Abernathy, Linda Lord, and Madelyn Simmons.

I also thank Elise Bean from Senator LEVIN's staff and John Phillips from JOHN KERRY's staff who worked closely with us and made significant contributions.

Finally, I take special note of Laura Ayoud of the Legislative Counsel's office. Mrs. Ayoud worked countless hours from the very beginning so that the committee print and a substitute for the Banking Committee markup were all produced on time and with the utmost accuracy and professionalism. I must say, I think the Senate is extremely fortunate to have professionals of the caliber of Mrs. Ayoud in the Legislative Counsel's office. I tip my hat not only to her, but to the extraordinary record of professionalism and dedicated service which the Legislative Counsel's office renders to the Senate.

Title III addresses all aspects of our defenses against money laundering. Those defenses generally fall into three parts. The first is the Bank Secrecy Act passed in 1970. It requires financial institutions to keep standardized transaction records and report large currency transactions and suspicious transactions, and it mandates reporting of the movement of more than $10,000 in currency into and out of our country.

The Bank Secrecy Act is so named because it bars bank secrecy in America by preventing financial institutions from maintaining opaque records or disregarding their records altogether. Secrecy is a hiding place for crime, and Congress has barred our institutions from allowing those hiding places.

The second part of our money-laundering defenses are the criminal statutes first enacted in 1986 that make it a crime to launder money and that allow criminal and civil forfeiture of the proceeds of crime.

The third part is a statutory framework that allows information to be communicated to and between law enforcement officials. Our goal must be to assure, to the greatest extent consistent with reasonable privacy protections—and we understood the necessity of balancing these considerations—to assure ourselves that necessary information can be used by the right persons in real time to cut off terrorism and crime.

Title III modernizes provisions in all three areas to meet today's threats in a global economy. Its provisions are divided into three subtitles dealing respectively with international counter-money-laundering measures, sections 311 through 330; Bank Secrecy Act amendments and related improvements, sections 351 through 356, and currency crimes and protections, sections 371 through 377.

There are 46 provisions in Title III. At this time, I want to summarize some of the bill's most important provisions.

Section 311 gives the Secretary of the Treasury, in consultation with other senior government officials, authority to impose one or more of five new "special measures" against foreign jurisdictions, entities, transactions or accounts that in the determination of the Secretary, after consultation with other senior federal officials, poses a "primary money laundering concern" to the United States. The special measures all involve special recordkeeping and reporting measures—to eliminate the curtains behind which launderers hide. In extreme cases the Secretary is permitted to bar certain kinds of interbank accounts from especially problematic jurisdictions. The statute specifies the considerations the Secretary must take into account in using the new authority and contains provisions to supplement the Administrative Procedure Act to assure that any remedies—except certain short-term measures—are subject to full comment from all affected persons.

This new provision gives the Secretary real authority to act to close overseas loopholes through which U.S. financial institutions are abused. At present the Secretary has no weapons except Treasury Advisories, which do not impose specific requirements, or full economic sanctions which suspend financial and trade relations with offending targets. President Bush's invocation of the International Economic Emergency Powers Act, IEEPA, several weeks ago was obviously appropriate. But there are many other situations in which we will not want to block all transactions, but where we will want to do more than simply advise financial institutions about under-regulated foreign financial institutions or holes in foreign countermoney laundering efforts. Former Deputy Secretary Eizenstat testified before the Committee in September that adding this tool to the Secretary's arsenal was essential.

Section 312 focuses on another aspect of the fight against money laundering, the financial institutions that make the initial decisions about what foreign banks to allow inside the United States. It requires U.S. financial institutions to exercise appropriate due diligence when dealing with private banking accounts and interbank correspondent relationships with foreign banks. With respect to foreign banks, the section requires U.S. financial institutions to apply appropriate due diligence to all correspondent accounts with foreign banks, and enhanced due diligence for accounts sought by offshore banks or banks in jurisdictions found to have substandard money laundering controls or which the Secretary determines to be of primary money laundering concern under the new authority given him by section 311.

The section also specifies certain minimum standards for the enhanced due diligence that U.S. financial institutions are required to apply to accounts opened for two categories of foreign banks with high money laundering risks—offshore banks and banks in jurisdictions with weak anti-money laundering and banking controls. These minimum standards were developed from, and are based upon, the factual record and analysis contained in the comprehensive report on correspondent banking and money laundering that was prepared by the staff of the Senate Permanent Subcommittee on Investigations, which Senator LEVIN chairs.

Section 312 is essential to title III. It addresses, with appropriate flexibility, mechanisms whose very importance for the conduct of commercial banking makes them special targets of money launderers, as illustrated in Senator LEVIN's extensive reports and hearings. The intent of the statute is to provide special due diligence rules which will apply to correspondent relationships maintained for foreign financial institutions not merely by domestic banks but by all types of financial institutions operating in the United States, subject to the authority of the Secretary of the Treasury to define the appropriate correspondent relationships by regulation where appropriate. Given the scope of the applicable definition of correspondent account, in new section 5318A (which also applies for purposes of new section 5318(i)), the general due diligence obligations of new section 5318(i)(1) apply to all correspondent accounts maintained by U.S. financial institutions for any foreign financial institution (i.e., not simply foreign depository institutions).

The statutory intent with respect to private banking accounts is similar; that is, the statute is intended to provide special due diligence rules for private banking accounts maintained for non-United States persons not merely by depository institutions operating in the United States, but by all types of financial institutions operating in the United States and defined in 31 U.S.C. 5312, subject to the authority of the Secretary of the Treasury to define the appropriate definitions of the relevant terms by regulation.

The question has been raised whether the due diligence provisions of section 312 are "discretionary." The answer is no. The provisions are to apply whether or not any rules are issued by the Treasury or whether the Treasury takes any other implementing action (in contradistinction to the provisions of new section 5318A, which must be affirmatively invoked by the Secretary. The Secretary is given authority to issue regulations "further delineating" the "due diligence policies, procedures, and controls" required by new subsection 5318(i), but those regulations must of course be consistent with the statutory language and intent to require all U.S. financial institutions to exercise the required standard of care in dealing with the risk of the misuse of the financial mechanisms with which the subsection deals.

A provision of section 319 of title III requires foreign banks that maintain correspondent accounts in the United States to appoint agents for service of process within the United States and authorizes the Attorney General and the Secretary of the Treasury to issue a summons or subpoena to any such foreign bank seeking records, wherever located, relating to such a correspondent account. U.S. banks must sever correspondent arrangements with foreign banks that do not either comply with or contest any such summons or subpoena, upon notification from the Attorney General or Secretary of the Treasury.

All of these provisions send a simple message to foreign banks doing business through U.S. correspondent accounts: be prepared, if you want to use our banking facilities, to operate in accordance with U.S. law.

Section 313 of title III also builds on the factual record before the Banking Committee to bar from the United States financial system pure "brass-plate" shell banks created outside the U.S. that have no physical presence anywhere and are not affiliated with any recognized banking institution. These shell banks carry the highest money laundering risks in the banking world because they are inherently unavailable for effective oversight, there is no office where a bank regulator or law enforcement official can go to observe bank operations, review documents or freeze funds. Thus the ban on provision of correspondent banking services for such brass-plate institutions is a particularly important part of title III. New 31 U.S.C. 5318(j) is intended to be vigorously enforced and strictly applied, especially in light of the relief provided in the statute for special banking vehicles that are affiliated with operating institutions and are subject to financial supervision along with those institutions.

Section 325 permits the Secretary to deal with abuse of another recognized commercial banking mechanism—concentration accounts that are used to commingle related funds temporarily in one place pending disbursement or the transfer of funds into individual client accounts. Concentration accounts have been used to launder funds, and the bill authorizes the Secretary to issue rules to bar the use of concentration accounts to move client funds anonymously, without documentation linking particular funds to their true owners. I believe that the Secretary must move promptly to exercise the regulatory authority granted by this section.

Section 326 will help ensure that individuals opening accounts with U.S. financial institutions provide information adequate to enable law enforcement and supervisory agencies to identify accounts maintained by individuals suspected of terrorist activities. The section requires the Secretary of the Treasury to prescribe regulations in consultation with each federal functional regulators to set minimum standards and procedures concerning the verification of customers' identity, maintenance of records of identity verification, and consultation at account opening of lists of known or suspected terrorists provided to the financial institution by a government agency. This section also requires the Secretary of the Treasury to submit recommendations to Congress, within 6 months of enactment, on the most effective way to require foreign nationals to provide financial institutions in the United States with accurate identity information.

It is the intent of section 326 that regulations pursuant to that section do not place obligations solely on the shoulders of the Nation's financial institutions, without placing any obligations on their customers. The contemplated regulations should therefore include provisions relating to the obligations of individuals to provide accurate information in connection with account-opening procedures, so that in appropriate cases penalties may apply under the Bank Secrecy Act to customers who willfully mislead bank officials about matters of customer identity.

Section 352 requires financial institutions to establish minimum antimoney laundering programs that include appropriate internal policies, management, employee training, and audit features. This is not a "one-size-fit-all" requirement; in fact its very generality recognizes that different types of programs will be appropriate for different types and sizes of institutions. It is our intention, by using general language in the amended provision, that the content of the relevant antimoney laundering programs will necessarily vary with the details of the particular financial institutions involved and the money laundering risks to which the nature of such institution and its financial products exposes the institution. Treasury regulations pursuant to this section should allow adjustment of the extent of antimoney laundering programs for smaller businesses but not exempt businesses from the requirement altogether simply because of their size.

A number of improvements are made to the suspicious activity reporting rules. First, technical changes strengthen the safe harbor from civil liability for institutions that report suspicious activity to the Treasury. Sec. 351. The provisions not only add to the protection for reporting institutions; they also address individual privacy concerns by making it clear that government officers may not disclose suspicious transaction reports information except in the conduct of their official duties. Section 356 also requires the issuance of final suspicious transaction reporting rules applicable to brokers and dealers in securities by July 1, 2002; senior officials of the relevant agencies must meet expeditiously to resolve the policy issues raised at staff levels about the content of the necessary regulations and the extent to which suspicious transaction reporting rules should be the same for banking and securities.

Sections 359 and 373 of the title deal with underground banking systems such as the Hawala, which is suspected of being a channel used to finance the al Qaeda network. Section 359 makes it clear that underground money transmitters are subject to the same recordkeeping rules—and the same penalties for violating those rules—as aboveground, recognized, money transmitters. It also directs the Secretary of the Treasury to report to Congress, within 1 year, on the need for additional legislation or regulatory controls relating to underground banking

systems. Section 373 clarifies that operators of a money transmitter business can be prosecuted under Federal law for operating an illegal money transmitting business if they do not have a required State license.

Section 360 authorizes the Secretary of the Treasury to instruct the United States Executive Director of each of the international financial institutions to use such Director's "voice and vote" to support loans and other use of resources to benefit nations that the President determines to be contributing to efforts to combat international terrorism, and to require the auditing of each international financial institution to ensure that funds are not paid to persons engaged in or supporting terrorism.

Section 371 creates a new Bank Secrecy Act offense involving the bulk smuggling of more than $10,000 in currency in any conveyance, article of luggage or merchandise or container, either into or out of the United States, and related forfeiture provisions. This provision has been sought for several years by both the Departments of Justice and Treasury.

Other provisions of the bill address relevant provisions of the Criminal Code. These provisions were worked out with the House and Senate Judiciary Committees and are included in title III because of their close relationship to the provisions of title 31 added or modified by title III.

The most important is section 315, which expands the list of specified unlawful activities under 18 U.S.C. 1956 and 1957 to include foreign corruption offenses, certain U.S. export control violations, offenses subject to U.S. extradition obligations under multilateral treaties, and various other offenses. The Department of Justice should make use of the expanded authority, created by section 315, to make the risk of detection to foreign kleptocrats immediate and palpable.

Section 316 establishes procedures to protect the rights of persons whose property may be subject to confiscation in the exercise of the government's antiterrorism authority. This provision is designed to assure that there is no situation in which the defendant in a forfeiture action will lack the opportunity to challenge the forfeiture simply because of the authority under which the forfeiture is sought.

Section 319 treats amounts deposited by foreign banks in interbank accounts with U.S. banks as having been deposited in the United States for purposes of the forfeiture rules, but grants the Attorney General authority, in the interest of fairness and consistent with the United States' national interest, to suspend a forfeiture proceeding based on that presumption. This closes an important forfeiture loophole.

A third important set of provisions modernize information-sharing rules to reflect the reality of the flight against money laundering and terrorism.

Section 314 requires the Secretary of the Treasury to issue regulations to encourage cooperation among financial institutions, financial regulators and law enforcement officials and to permit the sharing of information by law enforcement and regulatory authorities with such institutions regarding persons reasonably suspected, based on credible evidence, of engaging in terrorist acts or money laundering activities. The section also allows banks to share information involving possible money laundering or terrorist activity among themselves—with notice to the Secretary of the Treasury.

Section 330 states the sense of Congress that the President should direct certain cabinet officers to seek negotiations with foreign supervisory agencies to ensure that foreign institutions maintain adequate records relating to any foreign terrorist organization or person engaged in any financial crime and to make such records available to U.S. law enforcement and financial supervisory personnel.

Section 355 permits but does not require, a bank to include information, in a response to a request for an employment reference by a second bank, about the possible involvement of a former institution-affiliated party in potentially unlawful activity, and creates a safe harbor from civil liability for the bank that includes such information in response to an employment reference request, except in the case of malicious intent.

Section 358 contains amendments to various provisions of the Bank Secrecy Act, the Right to Financial Privacy Act, and the Fair Credit Reporting Act to permit information subject to those statutes to be used in the conduct of United States intelligence or counterintelligence activities to protect against international terrorism.

Section 361 seeks to enhance the ability of FinCEN to address money laundering and terrorism. The section makes FinCEN a bureau of the Treasury and requires the Secretary to establish operating procedures for the government-wide data access service and communications center that FinCEN operates. In recognizing FinCEN's evolution and maturity, it is not our intention to require existing delegations of authority to be reissued simply because FinCEN's organizational status has changed from Treasury office to Treasury bureau.

The modernization of our money-laundering laws represented by Title III is long overdue. It is not the work of one or two weeks but represents years of careful study and a bipartisan effort to produce prudent and effective legislation. The care taken in producing the legislation extends to several provisions calling for reporting on the effect of the legislation and a provision for a three-year review of the effectiveness of the legislation. Title III responds, as I have indicated, to the statement of Assistant Attorney General Chertoff, the head of the Department of Justice's Criminal Division. I want to express my appreciation to him, Under Secretary Gurule at the Treasury, and his associates for their help in this effort.

At the hearing on September 26, Assistant Attorney General Chertoff said, and I quote him, "We are fighting with outdated weapons in the money-laundering arena today." Without this legislation, the cracks in the financial system of which bin Laden spoke would remain open. We should not, indeed we cannot, allow that to continue. And that is why enactment of this legislation is so important.

Title III is a balanced effort to address a complex area of national concern. It is the result of a truly bipartisan effort on both sides of Congress working closely with the executive branch, with the White House, with the Department of the Treasury, and the Department of Justice. I very strongly urge support for this essential component of the antiterrorism package.

I ask unanimous consent that a section-by-section summary be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

TITLE III—INTERNATIONAL MONEY LAUNDERING ABATEMENT AND FINANCIAL ANTI-TERRORISM ACT OF 2001—SECTION-BY-SECTION SUMMARY

Section 301. Short title and table of contents

Section 302. Findings and purpose

Section 303. 4-Year congressional review-expedited consideration

Section 303 provides that the provisions added and amendments made by Title III will terminate after September 30, 2004, if the Congress enacts a joint resolution to that effect, and that any such joint resolution will be considered by the Congress expeditiously.

SUBTITLE A. INTERNATIONAL COUNTER-MONEY LAUNDERING AND RELATED MATTERS

Section 311. Special measures for jurisdictions, financial institutions, or international transactions or accounts of primary money laundering concern.

Section 311 adds a new section 31 U.S.C. 5318A, entitled "Special measures for jurisdictions, financial institutions, or international transactions of primary money laundering concern," to the Bank Secrecy Act. The new section gives the Secretary of the Treasury, in consultation with other Senior government officials, authority (in the Secretary's discretion), to impose one or more of five new "special measures" against foreign jurisdictions, foreign financial institutions, transactions involving such jurisdictions or institutions, or one more types of accounts, that the Secretary, after consultation with Secretary of State and the Attorney General, determines to pose a "primary money laundering concern" to the United States. The special measures include: (1) requiring additional recordkeeping or reporting for particular transactions, (2) requiring the identification of the foreign beneficial owners of certain accounts at a U.S. financial institution, (3) requiring the identification of customers of a foreign bank who use an interbank payable-through account opened by that foreign bank at a U.S. bank, (4) requiring the identification of customers of a foreign bank who use an interbank correspondent account opened by that foreign bank at a U.S. bank, and (5) after consultation with the Secretary of State, the Attorney General, and the Chairman of the Federal Reserve Board, restricting or prohibiting the opening or maintaining of certain interbank correspondent or payable through accounts. Measures 1–4 may not be imposed for more than 120 days except by regulation, and measure 5 may only be imposed by regulation.

Section 312. Special due diligence for correspondent accounts and private banking accounts

Section 312(a) of the Act adds a new subsection (i), entitled "Due Diligence for United States Private Banking and Correspondent Banking Accounts Involving Foreign Persons," to 31 U.S.C. 5318. The new subsection requires a U.S. financial institution that maintains a correspondent account or private banking account for a non-United States person for that person's representative) to establish appropriate, specific, and, where necessary, enhanced due diligence procedures that are reasonably designed to detect and report instances of money laundering through such accounts. For this purpose, a correspondent account is defined in the new section 5318A, added to the Bank Secrecy Act by section 311 of Title III.

The general requirement is supplemented by two additional, more specific, due diligence standards that are required for certain types of correspondent and private banking accounts.

Correspondent Accounts.—In the case of certain correspondent accounts, the additional standards required by subsection 5318(i)(2) require a U.S. financial institution to, at a minimum, do three things. First, it must ascertain the identity, and the nature and extent of the ownership interests, of the owners of any foreign bank correspondent whose shares are not publicly traded. Second, it must conduct enhanced scrutiny of the correspondent account to guard against money laundering and satisfy its obligation to report suspicious transactions under the terms of 31 U.S.C. 5318(g). Third, it must ascertain whether any foreign bank correspondent in turn provides correspondent accounts to third party foreign banks; if so the U.S. financial institution must ascertain the identity of those third party foreign banks and related due diligence information required under the general rules of paragraph 5318(i)(1).

These additional standards apply to correspondent accounts requested or maintained by or on behalf of any foreign bank operating under (i) an offshore banking license (defined by the statute as a banking license that bars the licensee from conducting banking activities with citizens of, or in the local currency of, the jurisdiction that issued the license), or (ii) under a banking license issued (A) by any country designated as noncooperative with international anti-money laundering principles by an intergovernmental body of which the United States is a member, with the concurrence of the U.S. representative to such body, or (B) by a country that has been designated by the Secretary of the Treasury as warranting special measures (i.e., the special measures authorized by new section 31 U.S.C. 5318A, added by Section 311 of Title III), due to money laundering concerns.

Private Banking Accounts.—In the case of private banking accounts, the additional standards required by subsection 5318(i)(3) require a U.S. financial institution to, at a minimum, do two things. First, the U.S. financial institution must take reasonable steps to ascertain the identity of the nominal and beneficial owners of the account and the source of funds deposited into the account, as needed to guard against money laundering and report any suspicious transactions under the terms of 31 U.S.C. 5318(g). Second, the U.S. financial institution must take reasonable steps to conduct enhanced scrutiny, that is reasonably designed to detect and report transactions that may involve the proceeds of foreign corruption, for any private banking account that is requested or maintained by, or on behalf of, a senior foreign political figure (or any immediate family member or close associate of such a political figure).

A private banking account for this purpose is any account or combination of accounts that requires a minimum aggregate deposit of at least $1 million, is established on behalf of one or more individuals who have either a direct or beneficial ownership interest in the account, and that is assigned to, or administered or managed by, in whole or in part, an officer, employee or agent of a financial institution who serves as liaison between the institution and the account's direct or beneficial owner or owners.

Effective Date; Regulations.—31 U.S.C. 5318(i) will take effect 270 days after the date of enactment of Title III as part of the United to Save America Act and will apply to otherwise covered correspondent and private banking accounts, whether opened before, on, or after the date of enactment. Section 312(b) of Title III requires the Secretary of the Treasury, in consultation with the appropriate federal functional regulators of the affected financial institutions, to further delineate, by regulation, the due diligence policies, procedures, and controls required under new subsection 5318(i), not later than 180 days of the date of enactment. However, the new subsection will take effect whether or not final regulations are issued before the 270th day following enactment, and any failure to issue regulations whether before or after the effective date is in no way to affect the enforceability of subsection 5318(i).

Section 313. Prohibition on United States correspondent accounts with foreign shell banks

Section 313(a) of the Act adds a new subsection (j), entitled "Prohibition on United States Correspondent Accounts with Foreign Shell Banks" to 31 U.S.C. 5318. The new subsection bars any depository institution or registered broker-dealer in securities, operating in the United States, from establishing, maintaining, administering, or managing a correspondent account in the United States for a foreign bank. If the foreign bank does not have "a physical presence in any country." The subsection also includes a requirement that any financial institution covered by the subsection must take reasonable steps (as delineated by Treasury regulations) to ensure that it is not providing the prohibited services indirectly to a "no-physical presence bank," through a third party foreign bank correspondent of the U.S. institution. The prohibition does not apply, however, to a correspondent account provided by a U.S. institution to a foreign "no physical presence" bank if that foreign bank is an affiliate of a depository institution (including a credit union or foreign bank) that does have a physical presence in some country and if the foreign shell bank is subject to supervision by a banking authority that regulates its "physical presence" affiliate in that country. Both the terms "affiliate" and "physical presence" are defined in the new subsection.

Section 313(b) provides that the ban on provision of correspondent accounts for brass-plate banks will take effect at the end of the 60 day period ending on the date of enactment.

Section 314. Cooperative efforts to deter money laundering

Section 314 requires the Secretary of the Treasury to issue regulations, within 120 days of the date of enactment, to encourage cooperation among financial institutions, financial regulators and law enforcement officials, and to permit the sharing of information by law enforcement and regulatory authorities with such institutions regarding persons reasonably suspected, based on credible evidence, of engaging in terrorist acts or money laundering activities. Section 314 also allows (with notice to the Secretary of the Treasury) the sharing of information among banks involving possible terrorist or money laundering activity, and requires the Secretary of the Treasury to publish, at least semiannually, a report containing a detailed analysis of patterns of suspicious activity and other appropriate investigative insights derived from suspicious activity reports and law enforcement investigations.

Section 315. Inclusion of foreign corruption offenses as money laundering crimes

Section 315 amends 18 U.S.C. 1956 to include foreign corruption offenses, certain U.S. export control violations, certain customs and firearm offenses, certain computer fraud offenses, and felony violations of the Foreign Agents Registration Act of 1930, to the list of crimes that constitute "specified unlawful activities" for purposes of the criminal money laundering provisions. These changes in law mean that the U.S. will no longer allow a rapacious foreign dictator to bring his funds to the U.S. and hide them without fear of detection or prosecution.

Section 316. Anti-terrorist forfeiture protection

Section 316 establishes procedures to protect the rights of persons whose property may be subject to confiscation in the exercise of the government's anti-terrorism authority.

Section 317. Long-arm jurisdiction over foreign money launderers

Section 317 amends 18 U.S.C. 1956 to give United States courts "long-arm" jurisdiction over foreign persons committing money laundering offenses in the United States; over foreign banks opening U.S. bank accounts; and over foreign persons who convert assets ordered forfeited by a U.S. court. The amendments made by section 317 also permit a federal court dealing with such foreign persons to issue a pre-trial restraining order or take other action necessary to preserve property in the United States to satisfy an ultimate judgment. Finally, the amendment also permits the appointment by a federal court of a receiver to collect and take custody of a defendant's assets to satisfy criminal or civil money laundering or forfeiture judgments.

Section 318. Laundering money through a foreign bank

Section 318 expands the definition of financial institution for purposes of 18 U.S.C. 1956 and 1957 to include banks operating outside of the United States.

Section 319. Forfeiture of funds in United States interbank accounts

Section 319 contains a number of provisions that are designed to deal with practical issues raised by money laundering control and financial transparency, relating primarily to correspondent accounts at U.S. financial institutions.

First, section 319 amends 18 U.S.C. 981 to treat amounts deposited by foreign banks in interbank accounts with U.S. banks as having been deposited in the United States for purposes of the forfeiture rules, but grants the Attorney General authority, in the interest of justice and consistent with the United

States' national interest, to suspend a forfeiture proceeding that is otherwise based on the "U.S. deposit" presumption.

Second, section 319 adds a new subsection (k) to 31 U.S.C. 5318 to require U.S. financial institutions to reply to a request for information from a U.S. regulator relating to anti-money laundering compliance within 120 hours of receipt of such a request, and to require foreign banks that maintain correspondent accounts in the United States to appoint agents for service of process within the United States; the new 31 U.S.C. 5318(k) authorizes the Attorney General and the Secretary of the Treasury to issue a summons or subpoena to any such foreign bank seeking records, wherever located, relating to such a correspondent account. Finally, the provision requires the U.S. depository institution or broker-dealer that maintains the account to sever correspondent arrangements with any foreign bank within 10 days of notification by the Attorney General or the Secretary of the Treasury (each after consultation with the other) that the foreign bank has neither complied with nor contested any such summons or subpoena.

Finally, Section 319 amends section 413 of the Controlled Substances Act to authorize United States courts to order a convicted criminal to return property located abroad and to order a civil forfeiture defendant to return property located abroad pending trial on the merits.

Section 320. Proceeds of foreign crimes

Section 320 amends 18 U.S.C. 981 to permit the United States to institute forfeiture proceedings against the proceeds of foreign criminal offenses found in the United States.

Section 321. Financial institutions specified in subchapter II of chapter 53 of Title 31, United States Code

Section 321 amends 31 U.S.C. 5312(2) to add credit unions, futures commission merchants, commodity trading advisors, and registered commodity pool operators to the definition of "financial institution" for purposes of the Bank Secrecy Act, and to include the Commodity Futures Trading Commission within the term "federal functional regulator" for purposes of the Bank Secrecy Act.

Section 322. Corporation represented by a fugitive

Section 322 extends the existing prohibition, in 18 U.S.C. 2466, against the maintenance of a forfeiture proceeding on behalf of a fugitive to include a proceeding by a corporation whose majority shareholder is a fugitive and a proceeding in which the corporation's claim is instituted by a fugitive.

Section 323. Enforcement of foreign judgments

Section 323 permits the government to seek a restraining order to preserve the availability of property subject to a foreign forfeiture or confiscation judgment.

Section 324. Report and recommendation

Section 324 directs the Secretary of the Treasury, in consultation with the Attorney General, the Federal banking agencies, the SEC, and other appropriate agencies, to evaluate operation of the provisions of Subtitle A of Title III of the Act and recommend to Congress any relevant legislative action, within 30 months of the date of enactment.

Section 325. Concentration accounts at financial institutions

Section 325 amends 31 U.S.C. 5318(h) to authorize the Secretary of the Treasury to issue regulations concerning the maintenance of concentration accounts by U.S. depository institutions, to prevent an institution's customers from anonymously directing funds into or through such accounts.

Section 326. Verification of identification

Sec. 326(a) adds a new subsection (l) to 31 U.S.C. 5318 to require the Secretary of the Treasury to prescribe by regulation, jointly with each federal functional regulator, minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at a financial institution; the minimum standards shall require financial institutions to implement, and customers (after being given adequate notice) to comply with, reasonable procedures concerning verification of customer identity, maintenance of records of identity verification, and consultation at account opening of lists of known or suspected terrorists provided to the financial institution by a government agency. The required regulations are to be issued within one year of the date of enactment.

Section 326(b) requires the Secretary of the Treasury, again in consultation with the federal functional regulators (as well as other appropriate agencies), to submit a report to Congress within six months of the date of enactment containing recommendations about the most effective way to require foreign nationals to provide financial institutions in the United States with accurate identity information, comparable to that required to be provided by U.S. nationals, and to obtain an identification number that would function similarly to a U.S. national's tax identification number.

Section 327. Consideration of anti-money laundering record

Section 327 amends section 3(c) of the Bank Holding Company Act of 1956, and section 18(c) of the Federal Deposit Insurance Act to require the Federal Reserve Board and the Federal Deposit Insurance Corporation, respectively, to consider the effectiveness of a bank holding company or bank (within the jurisdiction of the appropriate agency) in combating money laundering activities, including in overseas branches, in ruling on any merger or similar application by the bank or bank holding company.

Section 328. International cooperation on identification of originators of wire transfers

Section 328 requires the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to take all reasonable steps to encourage governments to require the inclusion of the name of the originator in wire transfer instructions sent to the United States, and to report annually to the House Committee on Financial Services and the Senate Committee on Banking, Housing, and Urban Affairs concerning progress toward that goal.

Section 329. Criminal penalties

Section 329 provides criminal penalties for officials who violate their trust in connection with the administration of Title III.

Section 330. International cooperation in investigations of money laundering, financial crimes, and the finances of terrorist groups

Section 330 states the sense of the Congress that the President should direct the Secretary of State, the Attorney General, or the Secretary of the Treasury, as appropriate and in consultation with the Federal Reserve Board, to seek negotiations with foreign financial supervisory agencies and other foreign officials, to ensure that foreign financial institutions maintain adequate records relating to any foreign terrorist organization or its membership, or any person engaged in money laundering or other financial crimes, and make such records available to U.S. law enforcement and financial supervisory personnel when appropriate.

SUBTITLE B. BANK SECRECY ACT AMENDMENTS AND RELATED IMPROVEMENTS

Section 351. Amendments relating to reporting of suspicious activities

Section 351 restates 31 U.S.C. 5318(g)(3) to clarify the terms of the safe harbor from civil liability for financial institutions filing suspicious activity reports pursuant to 31 U.S.C. 5318(g). The amendments to paragraph (g)(3) also create a safe harbor from civil liability for banks that provide information in employment references sought by other banks pursuant to the amendment to the Federal Deposit Insurance Act made by Section 355 of Title III.

Section 352. Anti-money laundering programs

Section 352 amends 31 U.S.C. 5318(h) to require financial institutions to establish anti-money laundering programs and grants the Secretary of the Treasury authority to set minimum standards for such programs. The anti-money laundering program requirement takes effect at the end of the 180 day period beginning on the date of enactment of the Act and the Secretary of the Treasury is to prescribe regulations before the end of that 180 day period that consider the extent to which the requirements imposed under amended section 5318(h) are commensurate with the size, location, and activities of the financial institutions to which the regulations apply.

Section 353. Penalties for violations of geographic targeting orders and certain recordkeeping requirements, and lengthening effective period of geographic targeting orders

Section 353 amends 31 U.S.C. 5321, 5322, and 5324 to clarify that penalties for violation of the Bank Secrecy Act and its implementing regulations also apply to violations of Geographic Targeting orders issued under 31 U.S.C. 5326, and to certain recordkeeping requirements relating to funds transfers. Section 353 also amends 31 U.S.C. 5326 to make the period of a geographic target order 180 days.

Section 354. Anti-money laundering strategy

Section 354 amends 31 U.S.C. 5341(b) to add "money laundering related to terrorist funding" to the list of subjects to be dealt with in the annual National Money Laundering Strategy prepared by the Secretary of the Treasury pursuant to the Money Laundering and Financial Crimes Strategy Act of 1998.

Section 355. Authorization to include suspicions of illegal activity in written employment references.

Section 355 amends section 18 of the Federal Deposit Insurance Act to permit (but not requires) a bank to include information, in a response to a request for an employment reference by a second bank, about the possible involvement of a former institution-affiliated party in potentially unlawful activity. A bank that provides information to a second bank under the terms of this amendment is protected from civil liability arising from the provision of the information unless the first bank acts with malicious intent.

Section 356. Reporting of suspicious activities by securities brokers and dealers; investment company study

Section 356(a) directs the Secretary of the Treasury, after consultation with the Securities and Exchange Commission and the Federal Reserve Board, to publish proposed regulations, on or before December 31, 2002, and final regulations on or before July 1, 2002, requiring broker-dealers to file suspicious activity reports.

Section 356(b) authorizes the Secretary of the Treasury, in consultation with the Commodity Futures Trading Commission, to prescribe regulations requiring futures commission merchants, commodity trading advisors, and certain commodity pool operators to submit suspicious activity reports under 31 U.S.C. 5318(g). To a significant extent, the authorization clarifies and restates the terms of existing law, but it also signals our concern that the Treasury move quickly to

determine the extent to which suspicious transaction reporting by commodities firms is necessary as a part of the nation's anti-money laundering programs.

Section 356(c) requires the Secretary of the Treasury, the SEC and Federal Reserve Board to submit jointly to Congress, within one year of the date of enactment, recommendations for effective regulations to apply the provisions of 31 U.S.C. 5311-30 to both registered and unregistered investment companies, as well as recommendations as to whether the Secretary should promulgate regulations treating personal holding companies as financial institutions that must disclose their beneficial owners when opening accounts or initiating funds transfers at any domestic financial institution.

Section 357. Special report on administration of Bank Secrecy provisions

Section 357 directs the Secretary of the Treasury to submit a report to Congress, six months after the date of enactment, on the role of the Internal Revenue Service in the administration of the Bank Secrecy Act, with emphasis on whether IRS Bank Secrecy Act information processing responsibility (for reports filed by all financial institutions) or Bank Secrecy Act audit and examination responsibility (for certain non-bank financial institutions) should be retained or transferred.

Section 358. Bank Secrecy provisions and antiterrorist activities of the United States intelligence agencies

Section 358 contains amendments to various provisions of the Bank Secrecy Act, the Right to Financial Privacy Act, and the Fair Credit Reporting Act, to permit information to be used in the conduct of United States intelligence or counterintelligence activities to protect against international terrorism.

Section 359. Reporting of suspicious activities by underground banking systems

Section 359 amends various provisions of the Bank Secrecy Act to clarify that the Bank Secrecy Act treats certain underground banking systems as financial institutions, and that the funds transfer recordkeeping rules applicable to licensed money transmitters also apply to such underground systems. Section 359 also directs the Secretary of the Treasury to report to Congress, within one year of the date of enactment, on the need for additional legislation or regulatory controls relating to underground banking systems.

Section 360. Use of authority of the United States Executive Directors.

Section 360 authorizes the Secretary of the Treasury to instruct the United States Executive Director of each of the international financial institutions (for example, the IMF and the World Bank) to use such Director's "voice and vote" to support loans and other use of resources to benefit nations that the President determines to be contributing to United States efforts to combat international terrorism, and to require the auditing of each international financial institution to ensure that funds are not paid to persons engaged in or supporting terrorism.

Section 361. Financial Crimes Enforcement Network.

Section 361 adds a new section 310 to Subchapter I of chapter 3 of title 31, United States Code, to make the Financial Crimes Enforcement Network ("FinCEN") a bureau within the Department of the Treasury, to specify the duties of FinCEN's Director, and to require the Secretary of the Treasury to establish operating procedures for the government-wide data access service and communications center that FinCEN maintains. Section 361 also authorizes appropriations for FinCEN for fiscal years 2002 through 2005. Finally, Section 361 requires the Secretary to study methods for improving compliance with the reporting requirements for ownership of foreign bank and brokerage accounts by U.S. nationals imposed by regulations issued under 31 U.S.C. 5314; the required report is to be submitted within six months of the date of enactment and annually thereafter.

Section 362. Establishment of highly secure network.

Section 362 directs the Secretary of the Treasury to establish, within nine months of enactment, a secure network with FinCEN that will allow financial institutions to file suspicious activity reports and provide such institutions with information regarding suspicious activities warranting special scrutiny.

Section 363. Increase in civil and criminal penalties for money laundering.

Section 363 increases from $100,000 to $1,000,000 the maximum civil and criminal penalties for a violation of provisions added to the Bank Secrecy Act by sections 311, 312 and 313 of this Act.

Section 364. Uniform protection authority for Federal Reserve facilities.

Section 364 authorizes certain Federal Reserve personnel to act as law enforcement officers and carry fire arms to protect and safeguard Federal Reserve employees and premises.

Section 365. Reports relating to coins and currency received in nonfinancial trade or business.

Section 365 adds 31 U.S.C. 5331 (and makes related and conforming changes) to the Bank Secrecy Act to require any person who receives more than $10,000 in coins or currency, in one transaction or two or more related transactions in the course of that person's trade or business, to file a report with respect to such transaction with FinCEN; regulations implementing the new reporting requirement are to be promulgated within six months of enactment.

Section 366. Efficient use of current transaction report system.

Section 366 requires the Secretary of the Treasury to report to the Congress before the end of the one year period beginning on the date of enactment containing the results of a study of the possible expansion of the statutory system for exempting transactions from the currency transaction reporting requirements and ways to improve the use by financial institutions of the statutory exemption system as a way of reducing the volume of unneeded currency transaction reports.

SUBTITLE C. CURRENCY CRIMES

Section 371. Bulk cash smuggling.

Section 371 creates a new Bank Secrecy Act offense, 31 U.S.C. 5332, involving the bulk smuggling of more than $10,000 in currency in any conveyance, article of luggage or merchandise or container, either into or out of the United States, and related forfeiture provisions.

Section 372. Forfeiture in currency reporting cases.

Section 372 amends 31 U.S.C. 5317 to permit confiscation of funds in connection with currency reporting violations, consistent with existing civil and criminal forfeiture procedures.

Section 373. Illegal money transmitting business.

Section 373 amends 18 U.S.C. 1960 to clarify the terms of the offense stated in that provision, relating to knowing operation of an unlicensed (under state law) or unregistered (under federal law) money transmission business. Section 373 also amends 18 U.S.C. 981(a) to authorize the seizure of funds involved in a violation of 18 U.S.C. 1960.

Section 374. Counterfeiting domestic currency and obligations.

Section 374 makes a number of changes to the provisions of 18 U.S.C. 470–473 relating to the maximum sentences for various counterfeiting offenses, and adds to the definition of counterfeiting in 18 U.S.C. 474 the making, acquiring, etc. of an analog, digital, or electronic image of any obligation or other security of the United States.

Section 375. Counterfeiting foreign currency and obligations.

Section 375 makes a number of changes to the provisions of 18 U.S.C. 478–480 relating to the maximum sentences for various counterfeiting offenses involving foreign obligations or securities and adds to the definition of counterfeiting in 18 U.S.C. 481 the making, acquiring, etc. of an analog, digital, or electronic image of any obligation or other security of a foreign government.

Section 376. Laundering the proceeds of terrorism.

Section 376 amends 18 U.S.C. 1956 to add the provision of support to designated foreign terrorist organizations to the list of crimes that constitute "specified unlawful activities" for purposes of the criminal money laundering statute. (This provision was originally included in another title of the terrorism legislation.)

Section 377. Extraterritorial jurisdiction.

Section 377 amends 18 U.S.C. 1029 to vest United States authorities with extraterritorial jurisdiction over acts involving access device, credit card and similar frauds that would be crimes if committed within the United States and that are directed at U.S. entities or linked to U.S. activities.

The PRESIDING OFFICER. The Senator from Nevada

Mr. REID. Mr. President, what Senator DASCHLE would like to do, and this has been cleared with the two managers, is have a vote before 2 p.m. today, approximately 5 minutes to 2 p.m. There is a meeting at the White House. There are a number of very important hearings, one including the Secretary of State. We are waiting for one more Senator who has 15 minutes. We understand that Senator SPECTER is on his way.

I ask unanimous consent that the vote on passage of the Counterterrorism Act occur at 1:55 p.m. Further, that there be 10 minutes of closing debate. I will alter that by saying whatever time Senator SPECTER does not use, it will be divided between the two managers of the bill.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SPECTER. 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. SPECTER. Mr. President, I have sought recognition to state my support

for the pending legislation. This is very important legislation in response to the atrocious terrorist attacks of September 11. We will at some date in the future conduct congressional oversight to make a determination as to whether there were any deficiencies in our intelligence operations prior to the September 11 attacks. However, we should wait until the appropriate time because our intelligence entities are busy now collecting intelligence to avoid any recurrence of the terrorist attacks. But it is important that law enforcement have appropriate tools at their disposal to combat terrorists. In the United States that means careful legislation which is in accordance with our constitutional rights and our civil liberties.

I believe Congress has responded appropriately in this matter with due deliberation. There is obviously a temptation in the face of what occurred on September 11 to respond spontaneously or reflexively, but we have undertaken this legislation. I think, with appropriate care and now have a good product.

I had expressed concerns when the bill was on the Senate floor that there could be some question about the adequacy of the deliberative process because the Supreme Court of the United States has held acts of Congress unconstitutional where they questioned the thoroughness or deliberation. I think this bill as presented today does meet that standard.

The legislation has very important provisions under the Foreign Intelligence Surveillance Act where a modification has been made to authorize electronic surveillance where there is a "significant" rather than a "primary" purpose, allowing use of the Foreign Intelligence Surveillance Act.

I chaired the Judiciary subcommittee, which did Department of Justice oversight, getting into the Foreign Intelligence Surveillance Act in some detail with respect to the Wen Ho Lee case. This is a change which is necessary, and I believe it is a change which will pass constitutional muster.

The electronic surveillance adds terrorism to wiretap predicates. It is rather surprising that terrorism, or allegations of terrorism, have not been sufficient to authorize electronic surveillance in the past. This corrects a long-standing deficiency.

The pen register has been expanded for nationwide orders, which makes sense on an administrative level and does not conflict with any issues of civil liberties or constitutional rights. The bill increases the civil liability for unauthorized disclosure of wiretapping information, which I think is important.

One of the key provisions of the bill is the sunset provisions relating to the Foreign Intelligence Surveillance Act, electronic surveillance, and information sharing which expire on December 31, 2005, with an appropriate exception for ongoing investigations. This will enable us to see how this expanded power will work out and will require reauthorization, new legislation, if we wish to continue it beyond.

The provisions on immigration are important, requiring the Department of Justice and the FBI to share certain information with the State Department and INS. The issues regarding detention, I think, have been very substantially improved to be sure that there is a protection of constitutional rights while giving law enforcement an adequate opportunity to conduct the inquiries which they need.

The provisions on money laundering, I think, are very important additions to take a stand, to stop terrorist organizations such as al-Qaida and terrorists such as Osama bin Laden not to be financed through the laundering which has been possible through laxity of the banking regulations.

In short, I believe this is a very significant step forward. There is a very heavy overhang over Washington, DC, today with what is happening here with our efforts to respond in so many ways to September 11. Now with the anthrax, we are all concerned about what may happen in the future.

Having served as chairman of the Intelligence Committee back in the 1995–1996 time period and chairing the appropriations subcommittee on terrorism, I am glad to see us move forward with this legislation which will give law enforcement the tools which would give them a better opportunity to prevent any more sneak attacks, any recurrence of the dastardly deeds of September 11.

I thank the Chair, and I yield the floor.

Mr. KENNEDY. Mr. President, I ask unanimous consent that a joint memorandum on the immigration provisions of H.R. 3162 be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JOINT MEMORANDUM OF SENATOR EDWARD M. KENNEDY AND SENATOR SAM BROWNBACK ON THE IMMIGRATION PROVISIONS OF "THE UNITING AND STRENGTHENING AMERICA BY PROVIDING APPROPRIATE TOOLS REQUIRED TO INTERCEPT AND OBSTRUCT TERRORISM ACT OF 2001"

The U.S.A. PATRIOT Act of 2001 contains certain immigration provisions worked out between the Administration and members of both parties. Because the legislation was developed outside the ordinary committee process, it was not accompanied by the usual reports elaborating on the background and purpose of its provisions. This memorandum is accordingly submitted on behalf of the Chairman and Ranking Member of the Subcommittee on Immigration of the Senate Committee on the Judiciary to provide some background and explanations for these provisions.

TITLE IV: PROTECTING THE BORDER

SUBTITLE A—PROTECTING THE NORTHERN BORDER

Section 401 Ensuring Adequate Personnel on the Northern Border

This section permits the Attorney General to lift the cap on the number of "full time equivalent" employees that the Immigration and Naturalization Service (INS) may assign to the northern border.

Section 402 Northern Border Personnel

This section triples the number of Border Patrol agents, INS Inspectors, and Customs Service employees in each state along the northern border. It also funds any additional staff and facilities needed to support northern border personnel. Further, this section provides $50 million to the INS and $50 million to the Customs Service to improve technology to monitor the northern border and to acquire additional equipment for this purpose.

Section 403 Requiring Sharing by the Federal Bureau of Investigation of Certain Criminal Record Extracts with Other Federal Agencies in Order to Enhance Border Security

This section provides the State Department and the INS with electronic access to the information contained in the Federal Bureau of Investigation's National Crime Information Center Interstate Identification Index (NCIC-III), Wanted Persons File, and other files maintained by the National Crime Information Center. This information is to be used in determining whether a visa applicant or an applicant for admission to the United States has a criminal history.

Under this section, the FBI must provide the State Department and the INS with extracts from its criminal history records and periodically update those extracts. Within four months of enactment of this legislation, the State Department must issue regulations regarding the proper use of the information provided by the FBI. Within two years of enactment, the Attorney General and the Secretary of State will report to Congress on the implementation of this section.

Further, this section directs the Attorney General and the Secretary of State, working with the National Institute of Standards and Technology (NIST) and other agencies, to develop and certify a technology standard that can conform the identity of a visa applicant or applicant for admission. As these agencies do not utilize a single technology, the development of a technology standard will facilitate the collection and sharing of relevant identity information between all the pertinent agencies. In particular, this section instructs those agencies to investigate the use of biometric technology. The technology standard must be developed and certified by NIST within two years of the date of enactment of this subsection.

Section 404 Limited Authority to Pay Overtime

This section eliminates the $30,000 limit on overtime pay for INS personnel during 2001. The limit was contained in the 2001 Department of Justice Appropriations Act, which did not contemplate the extraordinary demands that have been placed on the INS since the terrorist attacks of September 11.

Section 405 Report on the Integrated Automated Fingerprint Identification System for Points of Entry and Overseas Consular Posts

This provision instructs the Attorney General, in consultation with the heads of other federal agencies, to report to Congress on the feasibility of enhancing the FBI's Integrated Automated Fingerprint Identification System (IAFIS), and other identification systems, to better identify foreign nationals wanted in connection with criminal investigations in the United States and abroad.

SUBTITLE B: ENHANCED IMMIGRATION PROVISIONS

Section 411 Definitions Relating to Terrorism

Under current law, unless otherwise specified, an alien is inadmissible and deportable for engaging in terrorist activity only when

the alien has used explosives or firearms. Because a terrorist can use a knife, a box cutter, or an airplane in a terrorist act, this section expands the definition of terrorist activity to include the use of any "other weapon or dangerous device." The language looks to the purpose, not the instrument, in determining whether an activity is terrorist in nature.

Current immigration law contains no provision acknowledging organized terrorist threats per se and therefore contains no ground for inadmissibility or deportability based on activities involving "terrorist organizations." Section 411 defines terrorist organization to include: (1) an organization expressly designated by the Secretary of State under current section 219 of the INA; (2) an organization otherwise designated as a terrorist organization by the Secretary of State, in consultation with the Attorney General, after finding that such organization engages in terrorist activities, as defined by section 212(a)(3)(B)(iv)(I), (II) and (III), or provides material support to further terrorist activity; or (3) any group of two of more individuals that commits, plans, or prepares to commit terrorist activities.

This section adds three grounds of inadmissibility for individuals who, while not members of terrorist organizations, may advocate terrorism. These include (1) under new INA section 212(a)(3)(B)(i)(IV)(bb), being a representative of a group "whose public endorsement of terrorist activity" the Secretary of State has determined undermines United States efforts to combat terrorism; (2) under new INA section 212(a)(3)(B)(i)(V), using one's "position of prominence within any country to endorse or espouse terrorist activity, or persuade others to support terrorist activity or a terrorist organization, in a way that the Secretary of State determines" undermines United States efforts to combat terrorism; or (3) under new INA section 212(a)(3)(B)(i)(VI), being a spouse or child of a person inadmissible under this section, unless the spouse or child did not know or reasonably should not have known of the activity causing the inadmissibility, or the spouse or child has renounced such activity.

This section clarifies the circumstances under which the provision of material support, solicitation of funds, or solicitation of membership for a terrorist organization can be the basis for a charge permitting the removal of an alien. It provides that, after an organization is designated as a terrorist organization by the Secretary of State, any provision of material support or solicitation of funds or membership, as defined in subsection (iv) of INA section 212(a)(3)(B), for a designated organization may be the basis for a charge of removal. With respect to activity prior to the designation of the organization, or with respect to non designated organizations under section 212(a)(3)(B)(i)(III), only activity that was or is intended to further terrorist activity of the organization is prohibited by this section.

Section 412 Mandatory Detention of Suspected Terrorists; Habeas Corpus; Judicial Review

The section creates INA section 236A, giving the Attorney General the authority to certify and therefore detain persons who pose a terrorist or security threat to the United States. The power to certify is limited to the Attorney General and the Deputy Attorney General. This section also provides judicial review of this authority in habeas corpus proceedings.

This section sets forth the standards for certification, custody, and detention. All persons certified under these new provisions shall be placed in custody and detained until removed or decertified. Persons who are not removable would be released from custody upon conclusion of the proceedings.

Further, it permits certification of aliens whom the Attorney General has "reasonable grounds to believe" are described under the terrorism grounds of the INA or are engaged in any other activity that endangers the national security of the United States. "Reasonable grounds" is a higher standard than mere "reason to believe" and requires objective, articulatable grounds.

The Attorney General must, in certified cases, either initiate removal proceedings within seven days or release the alien. In cases not involving an alien certified by the Attorney General, proceedings should continue to be initiated within the time provided by the regulations. *See* 66 Fed. Reg. 48335 (amending 8 CFR §239.5(a)). The seven-day window to initiate proceedings is limited to cases certified under section 236A and should be used judiciously, with charges filed as promptly as possible.

For aliens whose removal is unlikely in the reasonably foreseeable future, the Attorney General is required to demonstrate that release of the alien will adversely affect national security or the safety of the community or any person before detention may continue beyond the removal period. Indefinite detention of aliens is permitted only in extraordinary circumstances. *Zadvydas v. Davis*, 121 S. Ct. 2491 (2001).

The Attorney General shall review the certification of an alien every six months and, when appropriate, revoke the certification and release the alien under such conditions as the Attorney General deems appropriate. The alien may submit documentation or other evidence to be considered by the Attorney General in reviewing his or her certification.

The Attorney General's decision to certify and detain an alien is subject to judicial review in habeas corpus proceedings. This review encompasses both procedural protections and the merits of the Attorney General's certification decision and any decision to extend detention beyond the expiration of the removal period where removal is unlikely in the reasonably foreseeable future. Habeas corpus review is permitted in any appropriate district court of the United States, but appeals are limited to the United States Court of Appeals for the District of Columbia, with review available in the United States Supreme Court by petition for certiorari or by original petition for habeas corpus. Restricting appellate review to a single court protects the government's interest in uniformity, while providing an alien with a meaningful opportunity to seek judicial review.

Section 413 Multilateral Cooperation Against Terrorists

The records of the State Department pertaining to the issuance of or refusal to issue visas to enter the United States are confidential and can be used only in the formulation and enforcement of U.S. law. This section allows the State Department to provide such records to a foreign government on a case-by-case basis for the purpose of preventing, investigation, or punishing acts of terrorism.

Section 414 Visa Integrity and Security

In 1996, Congress enacted legislation mandating the development of an automated entry/exit control system to record the entry and departure of every non-U.S. citizen arriving to the United States. The INS lacks the technology and funding to implement this measure at all ports of entry, especially on the land border. Last year Congress amended the law to establish reasonable implementation deadlines. This provision directs the Attorney General, in consultation with the Secretary of State, to fully implement the entry/exit system, as amended, as expeditiously as practicable, with particular focus on the utilization of biometric technology and the development of tamper-resistant documents. To that end, this section also authorizes the appropriation of such funds as may be necessary to implement this system.

The entry/exit system will notify the INS whether foreign nationals departed the United States under the terms of their visas. Since the vast majority of persons who enter the United States do not pose a threat to our safety or security, this provision requires that the information obtained from the entry/exit system be interfaced with intelligence and law enforcement databases to enable authorities to focus on apprehending those few who do pose a threat.

Federal intelligence and law enforcement agencies maintain "look out lists" containing the names of foreign nationals who pose safety or security threats. Not all critical information is currently shared with the INS and the State Department, which are the two agencies charged with determining who is granted a visa or admitted to the United States. This provision requires the Office of Homeland Security to submit a report to Congress assessing the information that these two agencies need to effectively screen out those who might pose a threat to the United States.

Section 415 Participation of Office of Homeland Security on Entry Task Force

This section includes the new Office of Homeland Security as a participant in the Entry and Exit Task Force established by the Immigration and Naturalization Service Data Management Improvement Act of 2000.

Section 416 Foreign Student Monitoring Program

In 1996, Congress established a program to monitor foreign students and exchange visitors to the United States, funded by user fees. While a pilot phase of this program ended in 1999, this system has not been implemented nationwide. This section requires the system to be fully implemented and temporarily funds the program through January 2003.

Currently, all institutions of higher education that enroll foreign students or exchange visitors are required to participate in the monitoring program. This section also expands the list of institutions to include air flight schools, language training schools, and vocational schools.

Section 417 Machine Readable Passports

The Visa Waiver Program permits nationals of participating countries to enter the United States without obtaining nonimmigrant visas. Countries participating in the program must have low nonimmigrant visa refusal rates, have machine readable passport programs, and not compromise the law enforcement interests of the United States.

This section requires the Secretary of State to conduct an annual audit of the program to assess measures to prevent the counterfeiting and theft of passports and to ascertain whether participating countries have established a program to develop tamper-resistant passports. Results of the audit will be reported to Congress.

Currently, nationals of participating countries have until October 1, 2007 to obtain machine-readable passports to seek admission to the United States. This section advances the deadline to October 1, 2003, but permits the Secretary of State to waive the requirements imposed by the deadline for all nationals of a program country, if that country is making sufficient progress to provide their nationals with machine-readable passports.

Section 413 Prevention of Consulate Shopping

This section directs the State Department to examine the concerns, if any, created by the practice of certain aliens to "shop" for a visa between issuing posts.

SUBTITLE C: PRESERVATION OF IMMIGRATION BENEFITS FOR VICTIMS OF TERRORISM

Section 421 Special Immigrant Status

The section provides permanent residence as special immigrants to the spouses and children of certain victims of the terrorist attacks. They include aliens who would have obtained permanent residence through a family or employment-based category, but for death, disability, or loss of employment as a direct result of the terrorist attacks on September 11, 2001. Permanent residence would be granted to the fiancé or fiancee (and children) of a U.S. citizen who died in the attacks. Permanent residence would also be granted to the grandparents of a child whose parents died in attacks, if either parent was a U.S. citizen or a permanent resident.

Section 422 Extension of Filing or Reply Deadlines

This section creates safeguards so that aliens seeking immigration benefits are not adversely affected by the terrorist attacks. For aliens in lawful nonimmigrant status at the time of the terrorist attacks, this section extends the filing deadline for an extension of status request or change of status request where the alien was unable to meet the filing deadline due to the terrorist attacks. Deadlines are similarly extended for aliens unable to reenter in time to request an extension of status, aliens unable to enter during the period of visa validity or parole, and aliens unable to depart within their period of lawful status or voluntary departure. The section also protects recipients of diversity visas who were adversely affected by the terrorist attacks.

Section 423 Humanitarian Relief for Certain Surviving Spouses and Children

Current law provides that an alien who was the spouse of a U.S. citizen for at least two years before the citizen died shall remain eligible for immigrant status as an immediate relative. This eligibility also applies to the children of the alien. This section provides that if the U.S. citizen died as a direct result of the terrorist attacks, the alien can seek permanent residence even if the marriage was less than two years old.

This section also protects the spouse and unmarried sons and daughters of a permanent resident killed in the terrorist attacks by allowing them to seek permanent residence either through a pending visa petition (filed by or on behalf of the deceased) or by filing a "self-petition" based on their relationship to the deceased permanent resident.

Section 424 "Age-Out" Protection for Children

By providing a brief filing extension, this provision ensures that no alien will "age out" of eligibility to immigrate as the result of the terrorist attacks. Aliens who turn 21 years of age while their applications are pending are no longer considered children under the INA, and therefore "age out" of eligibility to immigrate.

Section 425 Temporary Administrative Relief

This section provides temporary administrative relief to an alien lawfully present on September 10, who was the spouse, parent, or child of someone killed or disabled by the terrorist attacks and otherwise not entitled to relief.

Section 426 Evidence of Death, Disability, or Loss Employment

This section directs the Attorney General to establish evidentiary standards regarding on constitutes death, disability, or loss of employment "as a direct result" of the terrorist attacks. Regulations are not required to implement the provisions of this subtitle.

Section 427 No Benefit to Terrorists or Family Members of Terrorists

No benefit under this subtitle will be provided to anyone involved in the terrorist attacks on September 11 or to any family member of such an individual.

Section 428 Definitions

The term 'specified terrorist activity' means any terrorist activity conducted against the United States, its government, or its people of the United States on September 11, 2001.

TITLE VIII

Mr. GRAHAM. Mr. President, several provisions of title VIII would establish criminal prohibitions or expand existing criminal laws to deter terrorist conduct. My understanding is that the Senate certainly does not intend title VIII to criminalize otherwise lawful and authorized United States Government activities. Would the Senator confirm my understanding of the intent and effect of title VIII?

Mr. LEAHY. The Senator's understanding is absolutely correct. Unless expressly provided, none of the general restrictions in title VIII are intended to criminalize lawful and authorized United States Government activities.

Mr. BIDEN. Mr. President, 6 years ago I stood on this floor and called upon the Senate to join the fight against terrorism in the wake of the horrific bombing in Oklahoma City. Back then some argued terrorism was something that usually happened far away, in distant lands, over distant conflicts. Well, that's all changed.

Terrorism has come to America.

We have to be a little proactive now. Back then, I proposed a series of precise anti-terrorism tools to help law enforcement catch terrorists before they commit their deadly act, not ever imagining the events of September 11.

In particular, I said that it simply did not make sense that many of our law enforcement tools were not available for terrorism cases.

For example, the FBI could get a wiretap to investigate the mafia, but they could not get one to investigate terrorists. To put it bluntly, that was crazy! What's good for the mob should be good for terrorists.

Anyway, some of my proposals were enacted into law in 1996, a number were not.

There were those who decided that the threat to Americans was apparently not serious enough to give the President all the changes in law he requested.

Today, 5 years later, I again call on my colleagues to provide law enforcement with a number of the tools which they declined to pass back then. The anti-terrorism bill we consider today is measured and prudent. It has been strengthened considerably since the Administration originally proposed it in mid-September. It takes a number of important steps in waging an effective war on terrorism.

It allows law enforcement to keep up with the modern technology these terrorists are using. The bill contains several provisions which are identical or nearly identical to those I previously proposed.

For example: it allows the FBI to get wiretaps to investigate terrorists, just like they do for the Mafia or for drug kingpins; it allows the FBI to get a roving wiretap to investigate terrorists—so they can follow a particular suspect, regardless of how many different forms of communication that person uses; and it allows terrorists to be charged with Federal "racketeering offenses," serious criminal charges available against organizations which engage in criminal conduct as a group, for their crimes.

I am pleased that the final version of the bill we are considering today contains three provisions that I fought for.

First, section 813 incorporates a bill that Senator HATCH and I introduced earlier this year, S. 899. Named in honor of Delaware State trooper Francis Collender, who was tragically killed while on a traffic stop in Odessa, DE this past February, S. 899 and section 813 of this bill will raise the one-time death benefit paid to the families of slain or permanently disabled law enforcement officers. For too long, this benefit has stood at $100,000. It was indexed for inflation and currently stands at $151,000, but even this is far too low for the families of these heroes to make ends meet. The bill we consider today raises this benefit to $250,000, continues to index it for inflation, and makes it applicable to the family of any law enforcement or fire personnel who lost their life on or after January 1, 2001. It's the least we can do for the Collender family, the least we can do for the hundreds of families who tragically lost a loved one on September 11, and I'm grateful my colleagues have agreed we need to include my bill in this larger anti-terrorism bill today.

Second, section 817 is based on legislation I introduced in the 106th Congress, S. 3202. It may shock my colleagues that under current law, anyone, including convicted felons, fugitives, and aliens from terrorist-sponsoring states, can possess anthrax or other biological agents. And under current law, the FBI has no tool at its disposal to charge someone with possession of anthrax. Possession of anthrax, or any other dangerous biological agent, is legal, unless the FBI can make a case that the suspect intended to use the agent as a weapon. This far too high a hurdle for our investigators to overcome in many cases, and indeed the FBI has informed me it has hindered several of their past bioweapons investigations. Section 817 closes this loophole. It prohibits certain classes of individuals, felons, illegal aliens, fugitives and others, from ever possessing these dangerous biological agents. And for everyone else, my provision says you need to be able to show you possessed this stuff with a peaceful or

bona fide research reason. If not, you're going to be charged with a felony and you face up to ten years in Federal prison.

Finally, section 1005 of this bill incorporates my First Responders Assistance Act. I have spoken with too many local police officers, chiefs, firemen and women, and others who feel left out of our fight against terrorism. I commend FBI Director Mueller for recently pledging to do a better job sharing information with our State and local law enforcement people, but clearly more needs to be done. Who responds first to a terrorist incident? On September 11 it was the New York City and Arlington County, VA police and fire departments. That's always going to be the case, local law enforcement is our first line of defense against terrorists, and we need to give them the tools they need to get that job done well.

My provision will, for the first time, give State and local enforcement and fire personnel the opportunity to apply directly to the Justice Department to receive terrorism prevention assistance. Specifically, departments will now be able to get help purchasing gas masks, hazardous material suits, intelligence-gathering equipment, twenty-first century communications devices and other tools to help them respond to terrorist threats. This section also creates a new anti-terrorism training grant program that will fund seminars and other training sessions to help local police departments better analyze intelligence information they come across, help local fire departments acquire the knowledge they need to respond to critical incidents, and assist those agencies who may be called upon to stabilize a community after a terrorist incident. It is my intent that these funds go to professional law enforcement organizations who are in some instances already delivering this type of training. The Department of Justice's Office for Domestic Preparedness does some of this, but their program is a block grant sent to the Governor. I want to involve local police and fire departments directly in the fight against terrorism, and this section is an important step towards meeting that goal. The funds authorized, $100 million over the next four years, may not be enough to get the job done, but it's a good start. I thank the Police Executives Research Forum for working with me to craft this proposal, and I look forward to seeing significant dollars allocated to it in future spending bills.

So this bill contains many provisions critical to law enforcement. Some may say it doesn't go far enough.

I have to say, I was disappointed that the Administration dropped some proposals from an early draft of its bill, measures which I called for five years ago. Those measures are not in the bill we consider today, but I continue to believe that they're common-sense tools we ought to be giving to our men and women of law enforcement.

We should be extending 48-hour emergency wiretaps and pen-registers, caller-ID-type devices that track incoming and outgoing phone calls from suspects, to terrorism crimes. This would allow police, in an emergency situation, to immediately obtain a surveillance order against a terrorist, provided the police go to a judge within 48 hours and show that they had the right to get the wiretap and that emergency circumstances prevented them from going to the judge in the first place. Now, this emergency tool is available only for organized crime cases and the bill we consider today does not expand this power to terrorist investigations.

We should be extending the Supreme Court's "good faith" exception to wiretaps. This well-accepted doctrine prevents criminals in other types of offenses from going free when the police make an honest mistake in seizing evidence or statements from a suspect. We should apply this good faith exception to terrorist crimes as well, to prevent terrorists from getting away when the police make an honest mistake in obtaining a wiretap.

I'm pleased Chairman LEAHY and the Administration were able to reach consensus on the two areas which gave me some pause in the Administration's original proposal: those provisions dealing with mandatory detention of illegal aliens and with greater information sharing between the intelligence and law enforcement communities.

The agreement reached has satisfied me that these provisions will not upset the balance between strong law enforcement and protection of our valued civil liberties.

This bill is not perfect. No one here claims it embodies all the answers to the question of how best to fight terrorism. But I am confident that by updating our surveillance laws, by taking terrorism as seriously as we do organized crime, and by recognizing the important role state and local law enforcement has to play in this campaign, that we are taking a step in the right direction by passing this bill today.

ANTITERRORISM

Mr. KYL. Mr. President, I rise in strong support of the anti-terrorism bill. The bill will provide our Nation's law-enforcement personnel with important tools to more effectively investigate and prevent further attacks against the people of the United States.

At the outset, I want to make clear that we did not rush to pass ill-conceived legislation.

During the past two Congresses, when I chaired the Judiciary Committee's Subcommittee on Technology and Terrorism, the Subcommittee held 19 hearings on terrorism. I want to repeat that: 19. The witnesses who appeared before the Subcommittee included the then-Director of the FBI Louis Freeh and representatives of all three of the congressionally-mandated commissions on terrorism that have issued reports over the last two years. Additional hearings on terrorism were held by the full Judiciary Committee and by other committees.

Many of the provisions proposed by the Attorney General, and included in the legislation we sent to the President today, mirror the recommendations of one or more of the major terrorism commissions and have already been examined by the committee of jurisdiction. In fact, some of these provisions had already been voted on and passed by the Senate in other legislation.

Indeed, as I will discuss more fully in a minute, the language sent forward by the Attorney General to establish nationwide trap and trace authority was included in the Hatch-Feinstein-Kyl Amendment to the recently passed Commerce, Justice, State Appropriations bill. Much of the remaining language in that amendment was included in the Counterterrorism Act of 2000, which the Senate passed last fall, after a terrorist attack on the U.S.S. Cole killed 17 American sailors and injured another 39. That bill was based on recommendations of the bipartisan, congressionally-mandated National Commission on Terrorism, known as the Bremmer Commission, which was established in 1998 in response to the embassy bombings in Tanzania and Kenya.

One particularly important provision, which was included in both the CJS bill and the current bill, updates the law to keep pace with technology. The provision on pen registers and trap and trace devices: one, would allow judges to enter pen/trap orders with nationwide scope; and two, would codify current case law that holds that pen/trap orders apply to modern communication technologies such as e-mail and the Internet, in addition to traditional phone lines.

Nationwide jurisdiction for a court order will help law-enforcement "to quickly identify other members of a criminal organization such as a terrorist cell. Indeed, last year Director Freeh testified before the Terrorism Subcommittee that one of the problems law-enforcement faces is "the jurisdictional limitation of pen registers and trap-and-trace orders issued by federal courts."

He continued: "Today's electronic crimes, which occur at the speed of light, cannot be effectively investigated with procedural devices forged in the last millennium during the infancy of the information technology age."

Prior to the legislation we passed today, in order to track a communication that was purposely routed through Internet Service Providers located in different States, law-enforcement was required to obtain multiple court orders. This is because, under existing law, a Federal court can order only those communications carriers within its district to provide tracing information to law enforcement.

According to Director Freeh's testimony before the Terrorism Subcommittee, "As a result of the fact that investigators typically have to apply for numerous court orders to trace a single communication, there is a needless waste of time and resources, and a number of important investigations are either hampered or derailed entirely in those instances where law enforcement gets to a communications carrier after that carrier has already discarded the necessary information."

This bill solves the problem.

I would also like to address another important provision.

The bill will more clearly to criminalize the possession of biological and toxin agents by those who should not porsess them. The bill would amend the implementing legislation for the 1972 "Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological, Biological, and Toxin Weapons and on their Destruction," BWC. Article I of the BWC prohibits the development, production, stockpiling, acquisition, or retention of Microbial or other biological agents, or toxins, whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective, or other peaceful purposes. It is not the intent of the BWC, nor is it the intent of Section 802, to prevent the legitimate application of biological agents or toxins for prophylactic, protective, bona fide research, or other peaceful purposes. These purposes include, inter alia, medical and national health activities, and such national security activities as may include the confiscation, securing, and/or destruction of possible illegal biological substances.

In addition to the other provisions in this anti-terrorism legislation that will provide our law enforcement communities with the tools to weed out and stop terrorism, I want to express my support for the immigration provisions upon which the administration, key members of the House Judiciary Committee, Senators HATCH, KENNEDY, LEAHY and I have reached agreement, and which are included in this bill.

We must not forget, however, that the United States will continue to face overwhelming infrastructure and personnel needs at our consular offices abroad, along both the southern and northern border, and in our immigration offices throughout the United States. And, in addition to the provisions included in this anti-terrorism bill, the U.S. government will need additional tools to keep terrorists out of the country and, once they are in the country, find them and remove them. That means, among other things, eliminating the ability of terrorists to present altered international documents, and improving the dissemination of information about suspected terrorists to all appropriate agencies. After hearing first-hand about the extraordinary weaknesses of our immigration and visa processing systems, Senate Judiciary Terrorism Subcommittee Chairwoman DIANNE FEINSTEIN and I will soon introduce legislation to better equip our government with the tools necessary to make our immigration and visa processing systems more secure.

With that said, the anti-terrorism bill will certainly provide a better legal framework for keeping foreign terrorists out of the United States, and detaining them should they enter.

First, this anti-terrorism bill clarifies that the Federal Bureau of Investigation is authorized to share data from its "most wanted list," and any other information contained in its national crime-information system, with the Immigration Naturalization Service and the State Department. This will help the INS and State Department identify suspected terrorists before they come to the United States, and, should they gain entry, will help track them down on our soil. It also allows the State Department, during a U.S. criminal investigation, to give foreign governments information on a case-by-case basis about the issuance or refusal to issue a U.S. visa.

The bill will also clarify U.S. law prohibiting the entry of, and requiring the removal of, individual alien terrorists. It will probably surprise the Members of this body a great deal to know that, under current law, a terrorist alien is not considered either inadmissible to, or deportable from, the United States even if he or she has "endorsed or espoused terrorist activity that undermines the efforts of the United States to fight terrorism," or has provided "material support to a terrorist organization." Nor is an individual deportable for being a "representative of a terrorist organization." The anti-terrorism bill makes it clear to U.S. officials considering whether to allow someone to come to the country, that a person meeting any one of these criteria is not welcome to come here. Although the final bill prohibits admission of individuals who have endorsed terrorism or are representatives of a terrorist organization, neither of those criteria will make such an individual deportable. I will work to make it clear that such criteria are deportable.

In addition, the anti-terrorism package that we are debating today further defines what is considered by the United States to be a terrorist organization. Under current law, a terrorist organization must be designated by the Secretary of State under Section 219 of the Immigration and Nationality Act. This process can take several months, and has been criticized by some experts as potentially politically corruptible. Under this final package, Section 219 designations will remain in effect. A separate designation process is added, whereby an organization can be designated by the Secretary of State or the Attorney General, in consultation with each other, with seven days' notice to the leadership of the House and Senate and the congressional committees of jurisdiction. Additionally, an organization, whether or not it is formally designated by the Secretary of State or the Attorney General, can be considered to be terrorist if it is made up of two or more individuals who commit or plan to commit terrorist activities.

This anti-terrorism package also has provisions regarding temporary detention. It allows for the temporary detention of aliens who the Attorney General certifies that he has "reasonable grounds to believe is inadmissible or deportable under the terrorism grounds." This compromise represents a bipartisan understanding that the Attorney General of the United States needs the flexibility to detain suspected terrorists. Under the compromise that Members have reached, the Attorney General must charge an alien with a deportable violation or he must release the alien. In this final version, if the charge is not sustained, or if withholding of deportation is granted by an immigration judge then the alien must be released. In addition, the underlying certification, and all collateral matters, can be reviewed by any U.S. District Court and any appeals can be heard by U.S. Appeals Court for the District of Columbia. The Attorney General, under this final version, is required to review all individual certifications every six months, and any alien certified can ask that the Attorney General review the case.

Finally, this package will determine whether "consular shopping," i.e. someone has a visa application pending from his or her home country, but goes to another country for adjudication, is a problem. If so, the Secretary of State must recommend ways to remedy it. Another provision prevents countries that do not have machine-readable passports from participating in the Visa Waiver Program, although the Secretary of State is allowed to provide a waiver for countries that do not provide such passports. I do not support the waiver authority, but am pleased that the overall requirement is included. Another provision authorizes $36.8 million for quick implementation of the INS foreign student tracking system, a program that I have repeatedly urged be implemented. The final package also includes relief for immigrants, who but for the tragic events of September 11, are here legally and could now lose their legal status.

As former chairman and now ranking Republican of the Judiciary Committee's Terrorism Subcommittee, I have long suggested, and strongly supported, many of the anti-terrorism and immigration initiatives now being advocated by Republicans and Democrats alike. In my sadness about the overwhelming and tragic events that took thousands of precious lives, I am resolved to push forward to make the United States a safer place for its millions of law-abiding citizens and legal immigrants. That means delivering justice to those who are responsible for the lives lost on September 11, and reorganizing our institutions of government so that the law-abiding can continue to live their lives in freedom.

Finally, let me address briefly the concern voiced by some that we are in danger of "trampling civil liberties." I reiterate that we did not rush, that we have had thorough, deliberative hearings, and that many of the proposals within this bill have already been passed by the Senate. Nothing in the current bill impinges on civil liberties. The bill will give Federal agencies fighting terrorism the same tools we have given those fighting illicit drugs, or even postal fraud. Many of the tools in the bill are modernizations of the criminal law, necessitated by the advent of the Internet.

While some of these tools are extremely helpful in terrorism investigations, it makes no sense to refuse to apply these common sense changes to other crimes that are committed, like kidnaping, drug dealing, and child pornography. It is unwise to limit these tools to only terrorism offenses because often, at the outset of an investigation of a particular person or crime, law enforcement does not know what you are dealing with. A credit-card fraud case or a false immigration documents case may turn out to be connected to funding or facilitating the operations of a terrorist group. We should give law enforcement the tools it needs to have the best chance of discovering and disrupting these activities.

We have a responsibility to the people of this nation to ensure that those who are charged with protecting us from future terrorist attacks are empowered to do so. This is not a zero sum game. We can both ensure our security and protect our liberties.

We cannot afford to lose this race against terror, and we cannot afford to give the enemy in this war a full lap head-start. I support this bill. I commend President Bush and General Ashcroft for submitting a sound proposal to the Senate, and for their tremendous efforts during the past month.

SECTION 1012

Mr. HOLLINGS. I have a number of questions about the substance, scope and procedure of section 1012 of the USA PATRIOT Act of 2001. I am concerned that there are some significant issues which this provision has not addressed, notwithstanding its noble intentions. Would the gentleman be able to clarify some of these issues for me?

Mr. LEAHY. I will do my best to clarify the intent and operation of this section for the gentleman.

Mr. HOLLINGS. Would the gentleman please explain how the Secretary of DOT will determine whether an individual seeking an original or renewed license presents a security risk?

Mr. LEAHY. The Secretary will rely upon the background records check to be done by the Justice Department. Any further analysis to be done by the Secretary on this issue should be explained following a Congressional directive to do so, in regulations issued by the Secretary for notice and comment.

Mr. HOLLINGS. Does the section make clear what standards will be applied to determine if a security risk is presented by an individual?

Mr. LEAHY. At this time the section does not and that matter should be clarified in subsequent legislation.

Mr. HOLLINGS. I am concerned that the review process could be delayed and a person seeking renewal of a hazmat license could be unable to work due to matters beyond his or her control.

Mr. LEAHY. The gentleman is correct. Regulations need to be issued by the Secretary specifying time periods and making it clear that delays not due to the applicant should not force him to be out of work and that his existing hazmat license will remain in effect pending completion of the security risk review process.

Mr. HOLLINGS. I am troubled by the lack of due process protections for the applicant. What is the gentleman's opinion on this subject?

Mr. LEAHY. I agree with the gentleman. The section needs to be clarified by legislation and regulations issued making clear that any applicant denied a hazmat license because of a security risk will be advised of the reasons for such denial and given an opportunity to present any comments he or she deems appropriate. We need to provide the applicant with a right to challenge the Secretary's decision and insure due process is protected.

Mr. HOLLINGS. Finally, isn't there a concern that foreign drivers transporting hazmat present an equal, if not a greater, security risk than that presented by U.S. drivers? If so, how will we deal with foreign drivers because they do not appear to be covered by section 1012.

Mr. LEAHY. I fully agree with the gentleman. The legislation must address foreign drivers to cover adequately the security risks applicable to hazmat transportation.

Mr. THURMOND. Mr. President, the September 11 terrorist attack has brought to the forefront numerous flaws in how we control and manage immigration in this country. It is now clear that the control of our borders has become a matter of national security.

Let me first state that I have no doubt that most aliens who enter this country are innocent, hard-working people who make important contributions to our society. America can continue our tradition of supporting reasonable legal immigration, but I am concerned that we are allowing illegal immigration to get out of control.

According to the most recent census data, there are at least 7 and possibly as many as 8 million illegal aliens in the United States. The number has at least doubled just since 1990. This trend is very troubling and has to be reversed. We must do more to stop illegal aliens from entering our country, and we must do more to deport those who are already here illegally. Our previous efforts, such as the 1996 Immigration Act, have proven to be inadequate.

This is not only a matter of upholding our laws, it is a matter of maintaining the safety and security of our country. We do not even know how some of the September 11 hijackers got into the country. This is not acceptable. We must do more to track and keep out those who wish to harm our country and terrorize our citizens.

The Antiterrorism Act we are considering today contains some reforms in this area and is a step in the right direction. It expands the number of border Patrol agents, INS inspectors, and Customs agents along the Northern Border. Also, it provides for greater data-sharing, including giving the INS easier access to the criminal history information contained in the NCIC database. Moreover, it grants the Attorney General greater authority to detain those who may be involved in terrorist activity, although we should continue to review this issue and grant the Attorney General greater power in the future.

In addition to immigration, this bill contains other crucial reforms that will update our wiretapping laws and allow greater sharing of intelligence and law enforcement information. I strongly supported this bill during Judiciary Committee hearings, including in one hearing in the Constitution Subcommittee of which I am Ranking Member. I am pleased that we are finalizing this bill today.

However, this bill is only a beginning. It is a move in the right direction, not an end in itself. Much more needs to be done to protect our nation from illegal immigration.

I believe one important measure could be to return to annual registration for immigrants who are in the United States. Requiring immigrants to register each year would help the INS keep track of where immigrants are in the United States, and whether they have overstayed their visas. In addition, it would benefit aliens by helping them prove how long they have been in the United States.

An alien registration system existed before 1981. However, the system became inactive at that time due to lack of funds and administrative difficulties. I think the time has come to reconsider this program. Recent technology, such as scanners, can help address some of the record-keeping problems that harmed the old system.

There are many other reform possibilities. Currently, when an alien commits a crime in the United States and is ordered deported, some home countries refuse to take him back. This creates huge difficulties for us, especially when the alien has completed his prison sentence. I believe the United States should respond in kind by not granting visas to countries that have such a policy. This would encourage

countries to live up to their responsibilities. Also, we need to look into expanding the use of identification cards for aliens, including more fingerprinting.

The antiterrorism bill demonstrates that the Congress is committed to addressing the problems we face regarding immigration. I look forward to working with my colleagues to continue our important work in this area. It must remain a top priority. We should not rest until we have illegal immigration under control in this country.

Mr. SNOWE. Mr. President, I rise today in support of the anti-terrorism legislation we have before us, the USA PATRIOT Act. I supported the Senate bill when it passed 2 weeks ago, and this bill—which was overwhelmingly passed by the House yesterday—retains key provisions that give our Government the tools it needs to combat terrorism.

One of the key issues during the House-Senate negotiations was that of the so-called "sunset." While the Senate-passed bill ensured these provisions would remain in effect as long as necessary, the House voted to suspend the bill's provisions in 5 years. Ultimately, the bill before us today includes a four year sunset. While I believe the provisions of this bill will be needed to combat terrorism beyond 4 years, it is fair to say Congress should review the provisions and make an assessment of their effectiveness in 4 years.

Let me also say I am pleased to have worked in conjunction with Senator BOND and Senator CONRAD in supporting the Visa Integrity and Security Act. This bill addresses many of the concerns we raised, such as the importance of information sharing among government law enforcement and intelligence agencies with the State Department and tightening tracking controls on those entering the U.S. on student visas, including those attending flight schools. These are critical issues, and I commend both Senators for their efforts, and I am pleased the bill before us contains provisions from this bill on information sharing and the use of biometric technology for the entry and exit of aliens.

With this legislation, we take reasonable, constitutional steps to enhance electronic and other forms of surveillance, without trampling on the rights of Americans. We will also institute critical measures to increase information sharing by mandating access to the FBI's National Crime Information Center, or NCIC, by the State Department and INS.

Incredibly, while intelligence is frequently exchanged, no law requires agencies like the FBI and CIA to share information on dangerous aliens with the State Department or INS. While I am pleased the bill before us ensures information sharing between the FBI, State Department and INS, I believe it does not go far enough as other crucial agencies, such as the DEA, CIA, or DoD, that may have information the State Department and INS need, but are still not required to share information. In short, by only providing access to the FBI's NCIC system, we are not summoning the sum total of U.S. Government information on individual aliens which is now needed in our war on terrorism.

I saw firsthand the consequences of serious inadequacies in coordination and communication during my 12 years as ranking member of the House Foreign Affairs International Operations Subcommittee and chair of the subcommittee's Senate counterpart.

Access to the FBI's NCIC system by the State Department is a first step, and one that I advocated in 1993, after the Justice Department ruled that because the State Department was not a "law enforcement agency," it no longer had free access to the NCIC. Tellingly, after ruling, the visa denial rate for past criminal activities plunged a remarkable 45 percent—stark evidence that we can't afford to tie the hands of America's overseas line of defense against terrorism.

Although my legislation designated the State Department a "law enforcement agency" for purposes of accessing the NCIC when processing any visa application, whether immigrant or non-immigrant, a revised provision enacted in 1994 only provided the State Department with free access for purposes of processing immigrant visas—dropping my requirement for non-immigrant visas eventually used by all 19 suspected hijackers. Even that limited law was sunsetted in 1997 with a brief 6-month extension to 1998.

Currently, U.S. posts check the lookout database called the Consular Lookout and Support System—Enhanced, or CLASS-E, prior to issuing any visa. CLASS-E contains approximately 5.7 million records, most of which originate with U.S. embassies and consulates abroad through the visa application process. The INS, DEA, Department of Justice, and other federal agencies also contribute lookouts to the system, however, this is voluntary.

To further fortify our front-line defenses against terrorism—to turn back terrorists at their point of origin—information sharing should be mandatory, not voluntary. That is why I introduced a bill that would require that law enforcement and the intelligence community share information with the State Department and INS for the purpose of issuing visas and permitting entry into the U.S. And while my bill would have gone farther than the legislation before us, by including the DEA, CIA, Customs and the Department of Defense in the mandated information-sharing network, I am pleased that this bill we are considering at least mandates access to the NCIC by INS and the State Department.

The bottom line is, if knowledge is power, we are only as strong as the weakest link in our information network. Therefore, we must ensure that the only "turf war" will be the one to protect American turf.

Another important issue is that of verifying the identity of a visa holder. Once a visa is issued at the point of origin, we should be ensuring that it is the same person who shows up at the point of entry. The fact is, we don't know how many, if any, of the 19 terrorists implicated in the September 11 attacks entered the U.S. on visas that were actually issued to someone else.

Currently, once a visa is issued by the State Department, it then falls to INS officials at a port-of-entry to determine whether to grant entry. The problem is, no automated system is utilized to ensure that the person holding the visa is actually the person who was issued the visa. In other words, the INS official has to rely solely on the identification documents the person seeking entry is carrying—making that official's job that much more difficult.

There is a better way, and legislation I introduced would require the establishment of a fingerprint-based check system to be used by State and INS to verify that the person who received the visa is the same person at the border crossing station trying to enter the country.

Simply put, it requires the State Department and INS to jointly create an electronic database which stores fingerprints, and that other agencies may use as well. When a foreign national receives a visa, a fingerprint is taken, which then is matched against the fingerprint taken by INS upon entry to the U.S. This is a common sense approach that would take us one step closer to minimizing the threat and maximizing our national security.

The fact of the matter is fingerprint technology, one part of the larger category of biological factors that can be used for identification known as biometrics, is not new. In fact, the U.S. Government has already employed biometrics to verify identities at military and secret facilities, at ports-of-entry, and for airport security, among many others.

The bill before us includes a provision that requires the Attorney General to report on the feasibility of enhancing the FBI's Integrated Automated Fingerprint Identification System (IAFIS) or other identification systems to identify visa holders who may be wanted in a criminal investigation in the U.S. or abroad before they are issued a visa or permitted entry or exit to the U.S.

This surely doesn't sound all that much different than the legislation I have proposed. I am pleased this bill at least starts us down the road toward implementing biometric technologies, and I hope this can be achieved as soon as possible.

Although I would prefer an even stronger bill and indeed worked toward the inclusion of measures that would have accomplished this goal, this legislation negotiated by the House and Senate is vital to our national security, and I am proud to support it. The

war on terrorism is a war on many fronts. Some of the battles will be great in scale, many will be notable by what is not seen and by what doesn't happen, namely, that individuals who pose a serious threat to this nation never see these shores and never set foot on our soil.

Many of our greatest victories will be measured by the attacks that never happen, in battles we win before they ever have a name, in conflicts we prevent before they ever claim one American life. I hope we will pass and enact legislation that will help make that possible, and urge my colleagues to join me in supporting this bill.

Mr. President, I ask unanimous consent to have printed in the RECORD an op-ed from The Bangor Daily News.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Bangor Daily News, Oct. 21, 2001]

HOMELAND SECURITY AND THE "THREE C'S": COORDINATION, COMMUNICATION, AND COOPERATION

(By U.S. Senator Olympia J. Snowe)

This week, Congress is expected to send to the President landmark legislation for a new era: a bill designed to bring the full resources of the federal government to bear in our war against terrorism. One of the most critical elements of this anti-terrorism package—which also includes expanded authority to hunt down and identify terrorist activity within our own borders—addresses the "Three C's" that have been lacking among those federal agencies that are integral to preventing terrorism: coordination, communication, and cooperation.

Incredibly, there is no provisions of current law that mandates State Department access to sources such as the FBI's National Crime Information Center (NCIC). This system, which maintains arrest and criminal information from a wide variety of federal, state, and local sources as well as from Canada, will be used by the State Department to deny visas to dangerous aliens. Similar to legislation I introduced in 1993, the bill pending in conference will finally make such information-sharing a requirement, and when combined with the new Office of Homeland Security should help ensure that our federal agencies are as united in the effort against terrorism as the American people. I urged conferees to further strengthen this requirement, so both State and the Immigration and Naturalization Service (INS) have access to the full range of information gathered by U.S. intelligence and law enforcement agencies.

During my twelve years as ranking member of the House Foreign Affairs International Operations Subcommittee and Chair of the subcommittee's Senate counterpart, I saw firsthand why removing impediments to a cooperative federal effort is a national imperative. Perhaps the most egregious example came to light in our investigations into the coming-and-goings of radical Egyptian cleric Sheikh Omar Abdel Rahman, mastermind of the 1993 World Trade Center bombing.

Astoundingly, we found that in the period since 1987 when Sheikh Rahman was placed on the State Department lookout list, he entered and exited the U.S. five times totally unimpeded. Even after the State Department formally revoked his visa, INS granted him permanent residence status. When he was finally caught on July 31, 1991, reentering the U.S., he was immediately released back into U.S. society to allow him to pursue a multi-year appeal process.

Just as unbelievable is the fact that, even after the 1993 attack on the World Trade Center, membership in a terrorist organization in and of itself—with the exception of the PLO—was not sufficient grounds for visa denial. Rather, the Immigration Act of 1990 required the government to prove that an individual either was personally involved in a terrorist act, or planning one. This absurd threshold made it almost impossible to block individuals, such as Sheikh Rahman, from entering the country legally. Legislation I introduced in 1993 removed that bureaucratic and legal obstacle—yet it took nearly three more years to enact it as part of the Anti-Terrorism and Effective Death Penalty Act of 1996.

Further, to respond to the trail of errors we uncovered, provisions from my bill were enacted in a year later, in 1994, requiring modernization in the State Department's antiquated microfiche "lookout" system to keep dangerous aliens from entering the United States. Recognizing the need to mate these new technologies with the need for the most comprehensive, current and reliable information, the bill also attempted to address the issue of access. Tellingly, after the State Department lost free access to the NCIC because of a 1990 Justice Department ruling that the State Department was not a "law enforcement agency", the visa denial rate for past criminal activities plunged a remarkable 45 percent.

Therefore, my 1993 bill also designated the State Department a "law enforcement agency" for purposes of accessing the NCIC as well as other FBI criminal records when processing any visa application, whether immigrant or non-immigrant. Unfortunately, a revised provision also enacted in 1994 provided the State Department with free access to these FBI resources only for purposes of processing immigrant visas—dropping my requirement for non-immigrant visas eventually used by all 19 of the suspected hijackers. Even that limited law was allowed to expire, despite my legislation enacted in 1996 repealing the requirement that visa applicants be informed of the reason for a denial—a provision that law enforcement agencies legitimately believed could impede ongoing investigations, or reveal sources and methods.

Having introduced my own legislation after the attacks to mandate information sharing among all agencies such as the FBI, CIA, DEA, Customs, INS and the State Department, I would have preferred that the recently-passed anti-terrorism bill go even further. Nevertheless, re-instating State Department access to the NCIC for both types of visas is a critical step in ensuring that information sharing will no longer be voluntary and ad hoc.

To further fortify our front-line defenses against terrorism and turn back terrorists at their point of origin, I also proposed mandating information sharing by establishing Terrorist Lookout Committees, comprised of the head of the political section of each embassy and senior representatives of all U.S. law enforcement and intelligence agencies. The committees would be required to meet on a monthly basis to review and submit names to the State Department for inclusion in the visa lookout system. Unfortunately, Senators did not reach agreement on amendments that could be added to the anti-terrorism bill, so the package was ultimately passed with no modifications. Consequently, I will continue to work to pass this important measure separately.

Clearly, the catastrophic events of September 11 have catapulted us into a different era, and everything it forever changed. We must move heaven and earth to remove the impediments that keep us from maximizing our defense against terrorism, and that means changing the prevailing system and culture by re-focusing on the "Three C's" of coordination, communication and cooperation. The bottom line is, if knowledge is power, we are only as strong as the weakest link in our information network—therefore, we must ensure that the only "turf war" will be the one to protect American turf in our fight against terrorism, we can do no less.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I ask unanimous consent the time be divided equally between the distinguished chairman and myself.

How much time remains?

The PRESIDING OFFICER. Ten minutes for each side.

Mr. HATCH. Mr. President, as we wind down the debate and move to final passage, I want to continue my acknowledgment of those who worked so hard and were instrumental in getting this legislation enacted. I start again by expressing my gratitude to Senators KYL and FEINSTEIN for their efforts. No Senators have worked harder over the past few years in such a bipartisan manner on terrorist missions. They have both done an excellent job. Also, Senators BOB GRAHAM and SHELBY, who cosponsored this legislation, deserve credit for significant contributions. In the Intelligence Committee, of course, Senator SARBANES and Senator PHIL GRAMM are to be praised for the money laundering provisions of the package. They developed that in this bill. I credit the hard work of other fellow members of the Judiciary Committee; in particular, Senators BIDEN and SCHUMER, who have devoted their energy to several of these proposals. Their assistance was instrumental in shaping this final product.

Next, I thank my dedicated staff and my chief counsel and staff director, Makan Delrahim, who has been instrumental in putting this bill together. I also thank my crime policy counsels on the Judiciary Committee: Jeff Taylor, whose background as a federal prosecutor was crucial in crafting the many technical provisions of this legislation, as well as Stuart Nash, another former federal prosecutor, and Leah Belaire, each of whom has brought invaluable expertise to this process; my lead immigration counsel, Dustin Pead, and our tireless legislative assistant, Brigham Cannon, each has provided critical assistance. I am also grateful to Elizabeth Maier on Senator KYL's staff, David Neal on Senator BROWNBACK'S staff, and Esther Olavarria on Senator KENNEDY'S staff, for their input on the immigration provisions. I also extend our thanks to Sharon Prost, my former chief counsel who recently was appointed by President Bush to serve as a Federal appellate judge, for her wise counsel on this legislation.

In addition, I personally thank our Chairman, Senator LEAHY. I reserve that until the end. His staff deserve a lot of credit and I personally thank

them for their long hard hours. I thank personally his chief counsel and staff director, Bruce Cohen, and other members of his staff: Beryl Howell, Julie Katzman, Ed Barron, Ed Pagano, Tim Lynch, David James, and John Eliff, each of whose expertise I personally found invaluable. I am grateful to them for the many long hours they devoted to drafting this bill and helping ensure that our final product has strong bipartisan support. I enjoyed working with them and I certainly always enjoy working with Senator LEAHY and appreciate the good things we were able to do.

The Department of Justice has been of great assistance to us in putting this bill together. In particular, I would like to thank Attorney General John Ashcroft and his Deputy Larry Thompson for their wise counsel, their leadership, and their quick response to our many questions and concerns. Michael Chertoff, the Assistant Attorney General for the Criminal Division was a frequent participant in our meetings, as was Assistant Attorneys General Dan Bryant and Viet Dinh. Justice Department lawyers Jennifer Newstead, John Yoo, John Elwood, Pat O'Brien, and Carl Thorsen were also important and valuable participants in this process.

The White House Counsel and Congressional Liaison staff provided essential contributions at all stages of this process. Judge Al Gonzales, the White House Counsel, provided key guidance with the help of his gifted staff, including Deputy White House Counsel Tim Flanagan and Associate Counsels Courtney Elwood, Brett Kavanaugh, and Brad Berenson.

The White House Congressional Liaison office, together with the Vice President's office, worked nonstop to keep this process moving forward and were critically responsive to any requests the Senate had. Nick Calio, Ziad Ojakli, and Heather Wingate with the White House, and Nancy Dorn and Candy Wolff with the Vice President's office, deserve our gratitude for all the assistance they have given us.

Finally, Mr. President, I must recognize the diligence and invaluable assistance provided by leadership staff on both sides of the aisle.

Mark Childress and Andrea Larue with Majority Leader DASCHLE's office, and David Hoppe, Sharon Soderstrom, and John Mashburn with Senator LOTT's office, all deserve our collective thanks. These dedicated professionals selflessly gave up their nights and weekends to facilitate passage of this final product. Also, I take special pride in thanking Stewart Verdery, who now works for Senator NICKLES but previously worked on my Judiciary Committee staff, for his cooperation and assistance in this process.

As we close debate on this legislation, I would like to note that the fundamental obligation of government is to protect our citizens from harm and every member of this Senate, by virtue of the sworn oath of the office we hold, must do everything in his or her power to ensure that the heinous attacks of September 11 are never repeated. We must never forget the more than 5,000 innocent men, women, and children who lost their lives on American soil some 6 weeks ago.

I am grateful that I have been able to work on this matter with the distinguished Senator from Vermont. I am grateful we have been able to pull together, in a relatively short period of time, an antiterrorism bill that really is going to make a difference in all our lives. So I urge my colleagues' support for this important legislation, thank my colleagues for all their help.

Mr. President. The Department of Justice has prepared an excellent and precise analysis of the legislation, with which I fully agree. I ask unanimous consent that the analysis be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

OVERVIEW

In the wake of the tragic, criminal act of violence perpetrated against the United States on September 11, the Bush Administration proposed legislation that would provide the Department of Justice with the tools and resources necessary to disrupt, weaken, and counter the infrastructure of terrorist organizations, to prevent or thwart terrorist attacks, and to punish or defeat in battle perpetrators of terrorist acts.

On October 24, the House passed a bill which contains a substantial number of the key provisions originally requested by the Administration. The Department of Justice strongly supports this bill and urges the Senate to act quickly so that these new authorities can be made available to prosecutors and agents who are working around the clock to prevent future attacks and to bring the perpetrators of September 11 to justice.

The events of September 11, 2001 demonstrate that terrorist acts are perpetuated by expertly organized, highly coordinated, and well financed organizations, operating without regard to borders, to advance their agendas. The fight against terrorism that is both a war to defend the security of our nation and our citizens against terrorism and a unified criminal justice effort.

Existing laws fail to provide our national security authorities and law enforcement with certain critical tools they need to fight and win the war against terrorism. Indeed, we have tougher laws for fighting organized crime and drug trafficking than for combatting the threat of terrorism. For example, technology has dramatically outpaced our statutes. Many of our most important intelligence gathering laws were enacted decades ago, in and for an era of rotary telephones. Meanwhile, our enemies use e-mail, the Internet, mobile communications and voice mail. Until Congress provides law enforcement with the tools necessary to identify, dismantle and punish terrorist organizations, we are fighting an uphill battle.

Making the fight against terrorism a national priority must not and will not mean that the rights and freedoms guaranteed to all Americans under the Constitution will become victims of this war. In this law enforcement mission, as in all that we undertake at the Department of Justice, the protection of the rights and privacy of all Americans is the principle that guides us—the outcome which, if not achieved, renders our efforts meaningless.

This new terrorist threat to Americans on our soil is a turning point in America's history. It is a new challenge for law enforcement. Our fight against terrorism is not solely or primarily a criminal justice endeavor—it is defense of our nation and its citizens. We cannot wait for terrorists to strike to begin investigations and take action. We must prevent first, and prosecute second. The anti-terrorism proposals that have been submitted by the Administration and considered by the House and Senate represent careful, balanced, and long overdue improvements to our capacity to combat terrorism.

PROCESS

The Administration reached bipartisan agreement with the leadership of the House and Senate and the chairmen and ranking members of the Senate and House Judiciary Committees on a bill which was passed by the House on October 24 by an overwhelming majority.

The Department of Justice strongly supports this bill and urges the Senate to act quickly so that these new authorities can be made available to prosecutors and agents who are working around the clock to prevent future attacks and to bring the perpetrators of September 11 to justice. Although the compromises reflected in specific provisions of the bill do not in every case meet the Administration's original goals, the bill does overall substantially achieve each and every one of the Administration's objectives.

DISCUSSION ON SUBSTANTIVE PROVISIONS

Enhancing domestic security against terrorism (title I)

These provisions would provide new funding and structural reforms in the fight against terrorism. A counterterrorism fund would be established to address terrorism issues within the Department of Justice with regard to investigations and damage to components as a result of terrorism (§101), discrimination against Arab and Muslim Americans is condemned (§102); additional funding would be provided for the FBI's technical support center (§103); the National Electronic Crime Task Force Initiative would be expanded (§105); and the military would be authorized to assist state and local law enforcement in chemical weapons emergencies (§106).

The President's powers under the International Economic Emergency Power Act would be expanded in cases of military hostilities and regarding the use of classified information (§106). President Bush signed a new Executive Order under the International Emergency Economic Powers Act (IEEPA) blocking the assets of, and transactions with, terrorist organizations and certain charitable, humanitarian, and business organizations that finance or support terrorism. At present, however, the President's powers are limited to freezing assets and blocking transactions with such individuals and entities. Starving terrorist organizations of the funds that sustain them requires that we do more. When we encounter drug traffickers, for instance, we don't just freeze assets, we seize assets.

Enhanced surveillance procedures (title II)

These provisions of the bill address gaps in the coverage of the federal electronic surveillance statutes (particularly the wiretap statute, the pen registers and trap and trace statute, and the Electronic Communications Privacy Act). The key element that unites these provisions is the goal of making the statutes technology-neutral; that is, ensuring that the same existing authorities that apply to telephones, for example, are made applicable to computers and use of e-mail on the Internet. It is critically important to note that in drafting these provisions, the Department's goal was and remains ensuring that the scope of the authority remains the same—in other words, that no more or less information as is currently obtainable through a particular device (for example, a pen register) on a telephone, is obtainable from a computer.

Law enforcement must have intelligence gathering tools that match the pace and sophistication of the technology utilized by terrorists. Critically, we also need the authority for law enforcement to share vital information with our national security and intelligence agencies in order to prevent future terrorist attacks.

Terrorist organizations increasingly take advantage of technology to hide their communications from law enforcement. Today's terrorist communications are carried over multiple mobile phones and computer networks—frequently by multiple telecommunications providers located in different jurisdictions. To facilitate their criminal acts, terrorists do not discriminate among different kinds of technology. Regrettably, our intelligence gathering laws don't give law enforcement the same flexibility.

The bill creates a technology-neutral standard for intelligence gathering, ensuring law enforcement's ability to trace the communications of terrorists over mobile phones, computer networks and any new technology that may be developed in the coming years.

We are not seeking changes in the protections in the law for the privacy of law-abiding citizens. The bill would streamline intelligence gathering procedures only. Except for under those circumstances authorized by current law, the content of communications would remain off-limits to monitoring. The information captured by this technology-neutral standard would be limited to the kind of information you might find in a phone bill, such as the phone numbers dialed by a particular telephone.

The Department strongly opposed the two year "sunset" on these critical provisions in the original House version of the legislation. The President and the Attorney General have stressed that the threat of terrorism will not "sunset"; rather the fight against terrorism will be a long struggle, and law enforcement must have the necessary tools to fight this war over the long term. However, law enforcement must have these tools now. To calm fears of a permanent authority, the bill now includes a four-year "sunset" provision for several provisions as noted during the discussion of the impacted provisions, at which time it is the Administration's hope that these changes in surveillance law will be made permanent.

Foreign Intelligence Surveillance Act (FISA) amendments (title II)

These provisions sharpen the tools used by the FBI, CIA, and NSA for collecting intelligence on international terrorists and other targets under FISA, 50 U.S.C. §§1801-63. The amendments in this area would enable the agents and case officers of the FBI and CIA and the analysts of NSA to respond more quickly and efficiently to crises and to operational opportunities against terrorists and other targets.

Period of FISA Surveillance and Search Orders

Problem: Currently, with limited exceptions, applications to the FISA Court for its authorization to conduct electronic surveillance and physical search must be renewed by the Court every 90 and 45 days, respectively. Applications to the Court for surveillance and search against foreign terrorists and spies are noncontroversial but bog down the agencies and clog the Court.

Solution: The legislation would, for the conduct of electronic surveillance and physical search against foreign terrorists and spies, extend the duration of an approval order to 120 days with extension possible for up to a year for electronic surveillance and would extend the duration for searches from 45 to 90 days. (§207). This provision would sunset in four-years.

Multi-Point Authority

Problem: Foreign terrorists and spies are trained to change mobile or ground-line phones, hotel rooms, and restaurants in order to defeat surveillance. Currently, to effect FISA coverage at a new facility, DOJ must develop and draft a new application, get it certified by the Director of FBI and signed by the Attorney General, and find and present it to a judge on the FISA Court. This delays or defeats our coverage of these targets and impairs our ability to investigate and detect terrorism and espionage.

Solution: The bill would enable the FBI, in response to such actions by FISA targets that thwart coverage (§206), to serve an order on a previously unidentified vendor or facility in order to maintain the coverage. Congress passed a similar provision for Title III a few years ago. These provisions will sunset in four years.

Mobility—Nationwide Search Warrants

As communications technology now provides significant mobility to its users, who can pass from jurisdiction to jurisdiction in minutes, law enforcement and intelligence officers need that same flexibility.

The bill provides for nationwide search warrants for voice mail (§209), e-mail (as long as the issuing court has jurisdiction over the offense being investigated) (§220), and in investigations involving terrorism (§219).

Foreign Intelligence Information

Problem: Currently, as interpreted, the FISA requires that the FBI Director or other senior official certify that the collection of foreign intelligence is "the purpose" of the FISA search or surveillance. As interpreted by the FISA Court, that standard has hindered the Department's ability to coordinate multi-faceted responses to international terrorism, which involve foreign intelligence and criminal investigations and equities.

Solution: The bill would change this standard. The bill would require certification that the collection of foreign intelligence is "a significant purpose," rather than "the purpose," of the FISA search or surveillance; however, this provision is subject to the four-year sunset applicable to several FISA provisions. (§218).

Foreign Intelligence Information Sharing

Problem: Currently, with few exceptions, criminal investigators may not share grand jury or Title III information with the intelligence agencies. Records obtained through grand jury subpoenas and insights gained through Title III remain inaccessible to agencies that need such information in their operations and analysis.

Solution. The bill would enable foreign intelligence information obtained in a criminal investigation, including information obtained through a grand jury or Title III, to be shared with intelligence and other federal officers, subject to the four-year sunset and would require the court to be notified after any such information sharing occurs in the case of grand jury information. (§203). In addition, the Attorney General must establish procedures for the release of information when it pertains to a case against a United States citizen. Also, the FBI has been authorized to expedite the hiring of translators capable of translating any information gathered under these and other procedures (§205).

Pen Register, Business Records; National Security Letters

Problem: The ability of the FBI to obtain basic records as a part of an international terrorist or other intelligence investigation has been hampered by cumbersome procedures concerning pen registers, business records, and national security letters. As the current investigation of flight school records makes clear, our ability to gain quick access to such information may be critical to an investigation.

Solution: The legislation would enable the FBI to obtain toll, business, and other records more efficiently by eliminating the requirement of a showing that there is a nexus to a foreign power, and applying a standard of relevance to an intelligence or counterintelligence investigation. This new standard is limited to protection against international terrorism or clandestine intelligence activities and may not be based solely on First Amendment activities. (§§214, 215, 216). Pen/trap provisions would also now apply to Internet traffic, as well as telephone communications, while excluding Internet Service Providers (ISPs) and other entities complying with wiretap orders from liability based on any surveillance under these provisions. See also (§§201, 202, expanding predicates for obtaining surveillance authority). These provisions are subject to the four-year sunset.

Broadened Scope of Subpoenas for Records of Electronic Communications and Subscriber Records

The bill would permit the disclosure of information such as means of payment for electronic services, including bank account and credit card numbers, pursuant to subpoena. The bill would treat cable companies acting in their capacity of providing Internet services the same as other ISPs and telephone companies in this regard, removing them from the protections of laws governing cable privacy, the intent of which was and is to prevent disclosure of shows watched in the privacy of one's home not benign information such as account numbers and forms of payment. (§225). ISPs would also be permitted under the bill to disclose information of stored electronic communications where such communications indicate a risk of immediate death or injury. (§§210, 211, 212).

Delayed Notice of Execution of Search Warrant

The bill would permit delayed notice of execution of a search warrant in criminal investigations, for a reasonable time thereafter, where notice of the execution would have an adverse result (§213).

International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 (title III)

Title III of the bill is designed to impede the financing of terrorist activities. It accomplishes that goal by allowing the government to confiscate the assets of foreign terrorist organizations, the terrorists themselves and those who aid them. In addition, it allows the United States government to restrain those assets after indictment but before any final adjudication to ensure those assets are available to satisfy a judgment of forfeiture.

Law enforcement must be able to "follow the money" in order to identify and neutralize terrorist networks.

The bill gives law enforcement the ability to seize the assets of terrorist organizations. In addition, criminal liability is imposed on those who knowingly engage in financial transactions—money laundering—involving the proceeds of terrorist acts. In addition, financial institutions are encouraged to participate in this endeavor by providing civil

liability immunity to financial institutions that disclose suspicious activity. (§314). The bill further includes financial institutions in this endeavor by requiring them to have anti-money laundering programs. (§§314, 352).

The bill would expand the scope of predicate money laundering offenses to include providing material support for terrorist organizations. (§301). These offenses would further not be limited to conduct occurring within the United States, as long as the tools of the offense are in or passed through the United States. (§§302, 377).

Various common banking problems are also addressed in the bill, such as shell banks, correspondent accounts, and concentration accounts. (§§312, 313, 326). Treasury would be authorized to order special measures be taken by financial institutions where they are involved in such accounts or other primary money laundering concerns. (§311). Information would be made available as to such crucial facts as the beneficial, as opposed to nominal, owner of a bank account and minimum standards and policies would be put into effect to deal with correspondent and concentration accounts involving foreign persons. (§§312, 313, 325, 326).

Employee references would be permitted to include reference to suspicious activity by the employee without fear of liability and other cooperation among financial institutions, law enforcement, and regulatory authorities would be encouraged. (§§314, 330, 355).

These money laundering provisions are all subject to the four-year sunset.

Protecting the border (title IV)

The legislation expands the grounds for deeming an alien inadmissible or deportable from the United States for terrorist activity, provides for the mandatory detention of aliens whom the Attorney General certifies pose a risk to the national security, and facilitates information sharing within the U.S. and with foreign governments. Current law allows some aliens who are threats to the national security to enter and remain in the United States. The provisions in the bill correct those inadequacies and are necessary tools to prevent detain and remove aliens who are national security threats from the United States. The Attorney General would also have the authority to detain suspected terrorists who are threats to national security, as long as removal proceedings or criminal charges are filed within 7 days. (§412). In the rare cases where removal is determined appropriate but is not possible, detention may continue upon a review by the Attorney General every 6 months. (§412). The bill further would expand the definition of terrorist for purpose of inadmissibility or removal to include public endorsement of terrorist activity or provision of material support to terrorist organizations. (§411). The bill further expands the types of weapon use of which can be considered terrorist activity. (§411).

The ability of alien terrorists to move freely across borders and operate within the United States is critical to their capacity to inflict damage on the citizens and facilities in the United States. Under current law, the existing grounds for removal of aliens for terrorism are limited to direct material support of an individual terrorist. The bill would expand these grounds for removal to include material support to terrorist organizations. (§412).

To address the need for better border patrol, additional border patrol officers would be authorized, specifically on the northern border which has, during the investigation into the September 11th events, been shown to be extremely problematic. (§§401, 402). To aid INS agents, the FBI would also be required to provide criminal records information to those agents. (§403).

The bill addresses not only unwelcome suspected terrorist aliens but also immigrants who may need additional consideration to stay within the United States where their loved ones were victims of terrorist activity. (§§421–428).

Removing obstacles to investigating terrorism (title V)

The bill authorizes the Attorney General and Secretary of State to pay rewards related to terrorism investigations. It also provides for the DNA data collection from those convicted of terrorism offenses and the coordination of Federal law enforcement agencies. (§§501, 502, 503, 504).

Providing for victims and public safety officers (title VI)

The bill establishes procedures for expedited payment of public safety officers involved in the prevention, investigation, rescue or recovery efforts related to a terrorist attack, as well as providing increases to the Public Safety Officer Benefit Program. (§§611–614).

Increased information sharing (title VII)

The bill would require information sharing among Federal, State and Local law enforcement, thus, providing the necessary full picture needed to address terrorism. (§711).

Substantive criminal law/criminal procedure.

Strengthening the criminal law against terrorism (title VIII)

These provisions reform substantive and procedural criminal law to strengthen federal law enforcement's ability to investigate, prosecute, prevent, and punish terrorist crimes. There are substantial deficits in each of these areas which impede or weaken our antiterrorism efforts.

We must make fighting terrorism a national priority in our criminal justice system. Current law makes it easier to prosecute members of organized crime than to crack down on terrorists who can kill thousands of Americans in a single day. The same is true of drug traffickers and individuals involved in espionage—our laws treat these criminals and those who aid and abet them more severely than terrorists.

Our investigation has found that wide terrorist networks, not isolated individuals, are responsible for the September 11 attacks. Whether the members of these networks are in the United States or in other countries, they and those who aid them must be subject to the full force of our laws. Just as the law currently rewards those who harbor persons engaged in espionage, the bill would make the harboring of terrorists a criminal offense. The bill also increases the penalties for conspiracy to commit terrorist act, to a serious level as we have done for many drug crimes.

Key Provisions

Removing impediments to effective prosecution—elimination of statute of limitations for offenses creating the risk of death or personal injury and extending the statute for all other terrorism offenses to 8 years (§809).

Removing impediments to effective investigation—single jurisdiction search warrants; expanded jurisdiction to include terrorism against U.S. facilities abroad. (§818).

Strengthening substantive criminal law—prohibition on harboring terrorists and on material support of terrorists (§§805, 805, 807); making terrorist crimes RICO predicates (§813); extending powers of asset forfeiture to terrorists' assets (§805); including altering cyberterrorism offense (§814); expanding the offense of possession of bioweapons (prohibiting possession of biological toxins by felons and aliens) (§817), creating a federal offense for attacking mass transportation systems (§801); expanding definition of domestic terrorism and offenses of the crime of terrorism, requiring a showing of coercion of government as an element of the offense (§§802, 808).

Strengthening criminal penalties—longer prison terms and postrelease supervision of terrorists (§812); higher conspiracy penalties for terrorists (§811); alternative maximum sentences up to life for terrorism offenses (§810).

Improved intelligence (title IX)

The bill authorizes the Director of the CIA to establish requirements and provide for the collection of foreign intelligence. The Director would also be asked to ensure proper dissemination of foreign intelligence information. Only if the appropriate officials have all the relevant information will prevention, investigation, and prosecution be fully functioning. The bill also would provide for the tracking of terrorist assets as part of the collection of information. (§§901, 902).

Miscellaneous. (title X)

The bill would finally require the Department of Justice Inspector General to designate an official to receive civil liberties and civil rights complaints and report those complaints to Congress. The presumption is that such information will be used to determine the continuing viability of the provisions in the bill subject to sunset in 2005. (§1001).

Mr. HATCH. Mr. president, I also ask unanimous consent that a section-by-section analysis be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FINAL COUNTER-TERRORISM BILL SECTION-BY-SECTION ANALYSIS

Bill section	Bill description
1	Title and table of contents.
2	Construction of terrorism statutes.
801	Establishes a new offense that makes it a crime to use a weapon of mass destruction against a person within the United States, and a crime to use such a weapon against a national of the United States while such national is outside the United States. The offense covers the use of a weapon of mass destruction against any person within the United States, and also covers the use of a weapon of mass destruction against a national of the United States when the offender's purpose is to coerce, intimidate, or retaliate against a government or civilian population. The offense covers the use of a weapon of mass destruction against a national of the United States while such national is outside the United States. The offense covers the use of a weapon of mass destruction against any person within the United States, and also covers the use of a weapon of mass destruction against a national of the United States when the offender's purpose is to coerce, intimidate, or retaliate against a government or civilian population. The offense covers the use of a weapon of mass destruction against a national of the United States while such national is outside the United States.
802	Sense of Congress condemning domestic terrorism.
803	Amends the United States Sentencing Commission to provide a sentencing enhancement for terrorism offenses.
804	Amends the Federal Sentencing Guidelines to provide a sentencing enhancement for terrorism offenses.
805	Amends the United States Sentencing Commission to provide a sentencing enhancement for terrorism offenses.
806	Amends the United States Sentencing Commission to provide a sentencing enhancement for terrorism offenses.
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811	Amends the United States Sentencing Commission to provide a sentencing enhancement for terrorism offenses.
812	Amends the United States Sentencing Commission to provide a sentencing enhancement for terrorism offenses.
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815	Amends the United States Sentencing Commission to provide a sentencing enhancement for terrorism offenses.
816	Amends the United States Sentencing Commission to provide a sentencing enhancement for terrorism offenses.
817	Amends the United States Sentencing Commission to provide a sentencing enhancement for terrorism offenses.
818	Amends the United States Sentencing Commission to provide a sentencing enhancement for terrorism offenses.
901	Amends the United States Sentencing Commission to provide a sentencing enhancement for terrorism offenses.
902	Amends the United States Sentencing Commission to provide a sentencing enhancement for terrorism offenses.

FINAL COUNTER-TERRORISM BILL SECTION-BY-SECTION ANALYSIS—Continued

Bill section	Bill description
203(b)	Permits sharing of grand jury information regarding foreign intelligence and counterintelligence and federal pre-emptive, intelligence, protective, immigration, national defense and national security purposes, but only if the Court is informed of the fact that grand jury information has been shared with other officials and to which officials it was shared.
203(d)	Sharing of foreign intelligence information with federal law enforcement, intelligence, protective, immigration, national defense and national security officials.
204	Makes technical amendments relating to the application of pen register and trap and trace authority to electronic communications.
205	Requires that FBI translators be employed to assist in the translation of foreign intelligence information and electronic surveillance and physical search information.
206	Allows roving wiretaps by the FBI.
207	Allows certain surveillance and searches of agents of a foreign power to be conducted for an initial period of 120 days, and to be extended for an initial period of 90 days.
208	Increases the number of judges on the FISA Court to 11, at least three of whom must live within 20 miles of Washington, DC.
209	Allows voice mail to be seized under a search warrant, rather than a wiretap order.
210	Permits the seizure of records that the government can subpoena from communications providers, including the duration and source of payment.
211	Clarifies that statutes governing cable television and telecommunications providers do not prevent the Cable Act and, in cable companies that provide Internet or telephone service, to assist in the investigation of terrorism.
212	Allows communications providers to disclose communications and records of communications to protect life and limb and clarifies that victims of computer hacking can disclose non-content records to protect their rights and property.
213	Amends 18 USC 3103a to permit delayed notice of search warrants where court determines that immediate notice would have an "adverse result", which may cause property to be destroyed or damaged or may cause a person to flee prosecution.
214	Amends FISA to lower the standard for pen register and trap and trace authority in FISA cases to require only that information be relevant to an ongoing investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a U.S. person is not conducted solely on the basis of activities protected by the first amendment to the Constitution.
215	Business records provision allows any designee of the director of the FBI (not to exceed the Deputy Director) to apply to FISA court for an order requiring the production of any tangible things (including books, records, papers, documents and other items) for an investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a U.S. person is not conducted solely on the basis of activities protected by the first amendment to the Constitution.
216	Amends the pen register/trap and trace statute to apply to internet communications and to allow for a single order that covers the country.
217	Allows victims of computer hacking crimes to request law enforcement assistance in monitoring trespasses on their computers. "Computer trespasser" does not include persons who have a contractual relationship with the hacked computer's owner.
218	Allows the use of evidence in criminal cases that was obtained in reasonable reliance on FISA for "significant purpose" in foreign intelligence.
219	Permits courts to issue search warrants that are valid throughout the jurisdiction of the issuing judge.
220	Permits courts to issue search warrants for electronic evidence (e.g., e-mail) to be served on providers outside the issuing court, provided that jurisdiction can be obtained.
221	Authorizes President to impose sanctions relating to the export of devices that could be used to develop missiles or other weapons of mass destruction. Also imposes President's ability to prohibit exports to the national defense of foreign countries designated by the President.
222	Prohibits criminal offenses against persons who have had a hand in developing or deploying new technology as a result of the Act, and assures that they will be reasonably compensated.
223	Creates a cause of action and authorizes money damages against the United States or officers and employees of the United States for unauthorized disclosure of information obtained through electronic surveillance, physical searches, and pen register/trap and trace authority. Also requires that the Court be informed of any such disclosure.
224	Amends the pen register/trap and trace statute to apply to internet communications and to allow for a single order that covers the country.
225	Allows authorities to compel information relating to terrorist activity in emergency situations, and to allow for a single order that covers the country.
226	Creates immunity for those who give information to law enforcement officials in connection with a FISA order.
227	Sense of Congress regarding sunset.
228	Congressional findings.
229	Sunset provision, allowing sunsetting provisions and expires in 2005 if Congress enacts a joint resolution.
230	Authorizes the Secretary of Treasury (Secretary) to impose final financial institutions administer a variety of special measures to prevent money laundering, such as requiring certain transactions and obtaining information about certain financial accounts.
231	Requires special due diligence requirements for private banking and correspondent accounts that involve foreign persons.
232	Prohibits certain financial institutions from maintaining correspondent accounts with foreign shell banks.
233	Requires Treasury Secretary to promulgate regulations to encourage cooperation among financial institutions, regulators, and law enforcement, allows financial institutions to share information regarding persons involved in terrorism-related acts, or money laundering.
234	Includes certain foreign crimes as offenses for purposes of laundering money and smuggling—as "specified unlawful activities" under the money-laundering statute.
235	Allows persons to contest confiscation of their property in connection with administration forfeitures.
236	Authorizes forfeiture of funds held in U.S. interbank accounts.
237	Amends the definition of "financial institutions" to include a "foreign bank".
238	Permits forfeiture of funds held in U.S. interbank accounts, upon the request of federal banking agencies, requires financial institutions to maintain records sufficient to identify anti-money laundering compliance.
239	Authorizes the confiscation of property related to terrorism offenses, including conspiracy and attempt, and provides for the confiscation of property.
240	Includes certain crimes in the definition of "financial institutions", including federal securities, commodities and the Commodity Futures Trading Commission.
241	Provides that a person providing legal services from using such assistance in criminal actions, also applies to civil actions brought by organizations whose officers are fugitives (repeals 28 U.S.C. § 1745 and adds new 28 U.S.C. § 2466).
242	Allows civil forfeiture relating to crimes to preserve the availability of property subject to forfeiture by a foreign government.
243	Requires Treasury Secretary to issue regulations governing correspondent accounts, to ensure that such accounts cannot secretly launder funds.
244	Requires Treasury Secretary to promulgate rules requiring financial institutions to verify the identities of persons opening accounts.
245	Requires the government to disclose financial information obtained from foreign governments when dealing in appropriate cases, including grand jury material.
246	Requires Treasury Secretary to establish a mechanism to identify the ultimate owner of new accounts.
247	Requires financial institutions to cooperate with foreign governments to identify the ultimate owner of new accounts.
248	Expands the scope of authority to confiscate property in connection with the laundering of such proceeds.
249	Sense of Congress that the United States should not be a safe haven for terrorists, and that it is the duty of the United States to bring to justice those who commit terrorist acts against the United States.
250	Grants immunity to financial institutions that voluntarily disclose information to law enforcement, provided that the disclosure is made in the spirit of cooperation.
251	Grants Treasury Secretary authority to establish mechanisms for exchanges of information between financial institutions and federal agencies.
252	Requires Treasury Secretary to promulgate regulations for the protection of computerized financial records, including a requirement that such records be maintained for a period of five years.
253	Requires Treasury Secretary to establish a secure network to allow financial institutions to file reports and receive information.
254	Establishes the Federal Bureau of Investigation's authority to pay rewards for information relating to terrorism.
255	Requires Treasury Secretary to establish a secure network to allow financial institutions to file reports and receive information.
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362	Requires Treasury Secretary to establish a secure network to allow financial institutions to file reports and receive information.
363	Increases civil and criminal penalties for money laundering.
364	Authorizes the Federal Bureau of Investigation to hire security officers.
365	Requires certain transactions in currency other than $10,000 to be reported in a manner similar to reports to the Internal Revenue Service.
366	Requires Treasury Secretary to study expanding reporting requirements to cash transactions.
367	Makes it a crime to smuggle more than $10,000 in currency into or out of the United States, or to attempt to do so, or to conspire to do so.
368	Authorizes civil and criminal forfeiture in currency reporting cases.
369	Sense of Congress that the United States should not be a safe haven for money launderers.
370	Requires Treasury Secretary to report to Congress on the feasibility of a system for the tracking of cross-border electronic transfers of funds.
371	Requires Treasury Secretary to report to Congress on the feasibility of a system for the tracking of cross-border electronic transfers of funds.
372	Requires Treasury Secretary to report to Congress on the feasibility of a system for the tracking of cross-border electronic transfers of funds.
373	Makes it illegal to operate a money transmitting business without a license.
374	Increases the penalties for counterfeiting United States currency and obligations, clarifies the extraterritorial jurisdiction regarding counterfeiting offenses, and provides for forfeiture of counterfeit currency.
375	Increases the penalties for counterfeiting foreign currency and obligations.
376	Includes a money laundering offense as part of the racketeering offense, providing material support or resources to a foreign terrorist organization, to violations of 18 USC § 2339B.
377	Provides extraterritorial jurisdiction over certain offenses involving terrorism.
401	Authorizes the Attorney General to increase the number of Immigration and Naturalization Service inspectors, Immigration Service examiners, and investigators to assist in the protection of the borders.
402	Requires the Director of the Office of Personnel Management, in consultation with the Attorney General, the Director of the Federal Bureau of Investigation, and the Director of the Office of Personnel Management, to develop and implement a plan to expand the use of information technology in personnel management processes.
403	Requires the Attorney General and the Director of the Federal Bureau of Investigation to provide to the Department of State and the Immigration and Naturalization Service certain criminal record information.
404	Requires the Attorney General to report to Congress on the feasibility of enhancing the Immigration and Naturalization Service's ability to process foreign nationals who may be admitted to the United States.
405	Authorizes appropriations for the Immigration and Naturalization Service.
406	Requires the Attorney General and the Secretary of State to jointly conduct a study of the feasibility of utilizing certain technologies for visa issuance or entry into the United States by aliens who may be engaged in terrorist activity.
407	Requires the Attorney General to report to Congress on the feasibility of enhancing the Immigration and Naturalization Service's ability to process foreign nationals who may be admitted to the United States.
408	Requires the Attorney General and the Secretary of State to jointly conduct a study of the feasibility of utilizing certain technologies for visa issuance or entry into the United States by aliens who may be engaged in terrorist activity.
409	Requires the Attorney General and the Secretary of State to jointly conduct a study of the feasibility of utilizing certain technologies for visa issuance or entry into the United States by aliens who may be engaged in terrorist activity.
410	Requires the Attorney General and the Secretary of State to jointly conduct a study of the feasibility of utilizing certain technologies for visa issuance or entry into the United States by aliens who may be engaged in terrorist activity.
411	Defines the terms "terrorism" and "terrorist activity" to include the use of a weapon or dangerous device to cause death or serious bodily injury to another person, or to cause substantial damage to property in circumstances in which the person knows that the conduct is likely to cause such injury or damage.
412	Requires the Attorney General to take into custody any alien who is a terrorist or who is engaged in terrorist activity.
413	Gives Secretary of State discretion to provide rewards for information to combat terrorism, for the purpose of combating international terrorism or crime, given certain conditions, including that the information is not available to the public.
414	Sense of Congress regarding visas for aliens who are members of the armed forces of a NATO member country.
415	Provides that Office of Homeland Security shall coordinate all activities of the Office of Homeland Security, Congress in 1998.
416	Requires the Attorney General to implement a program to monitor the entry and exit of aliens who are nonimmigrants.
417	Requires the Secretary of State to implement a program to monitor the entry and exit of aliens who are nonimmigrants.
418	Requires Secretary of State to notify the Attorney General of the identity of any alien who is a terrorist or who is engaged in terrorist activity.
419	Requires the Secretary of State to notify the Attorney General of the identity of any alien who is a terrorist or who is engaged in terrorist activity.
420	Requires the Secretary of State to notify the Attorney General of the identity of any alien who is a terrorist or who is engaged in terrorist activity.
421	Provides that an alien who is a spouse or parent of an alien who was a victim of the September 11 attacks and who is not a terrorist or who is not engaged in terrorist activity, shall be eligible for adjustment of status to that of an alien lawfully admitted for permanent residence.
422	Provides that an alien who is a spouse or parent of an alien who was a victim of the September 11 attacks and who is not a terrorist or who is not engaged in terrorist activity, shall be eligible for adjustment of status to that of an alien lawfully admitted for permanent residence.
423	Provides that aliens who are spouses or parents of an alien who was a victim of the September 11 attacks and who are not a terrorist or who are not engaged in terrorist activity, shall be eligible for adjustment of status to that of an alien lawfully admitted for permanent residence.
424	Provides that aliens who are spouses or parents of an alien who was a victim of the September 11 attacks and who are not a terrorist or who are not engaged in terrorist activity, shall be eligible for adjustment of status to that of an alien lawfully admitted for permanent residence.
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427	Provides that aliens who are spouses or parents of an alien who was a victim of the September 11 attacks and who are not a terrorist or who are not engaged in terrorist activity, shall be eligible for adjustment of status to that of an alien lawfully admitted for permanent residence.

FINAL COUNTER-TERRORISM BILL SECTION-BY-SECTION ANALYSIS—Continued

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402	Definitions
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Mr. LEAHY. Mr. President, I thank the distinguished senior Senator from Utah for his comments. Senator HATCH and I, over the last generation, have spent a great deal of time with each other on a many issues, on numerous committees, especially the Judiciary Committee. But we have spent so much time together on this, we even appear to be coordinating wardrobes with gray suits and blue shirts today. But I appreciate his help.

I appreciate so many who helped on crafting and moving forward with this legislation. I thank our leader, Senator DASCHLE. It would have been impossible for us to be here at this point without his steadfast commitment to the committee system and his willingness to have the committee work diligently to improve the legislation initially presented by the Administration. On my behalf and on behalf of the American people, I want to publicly acknowledge his vital role in this legislation. Senator REID has also provided valuable counsel and assistance as we have moved first the original Senate USA Act, S. 1510, and now the House-passed bill, H.R. 3162.

Many others also helped us: Senator HATCH and Senator SPECTER and Senator GRASSLEY and Senator DURBIN, Senator SCHUMER, Senator CANTWELL, and so many others on the Judiciary committee.

I said many times we are merely constitutional impediments to staff.

In particular, I want to thank Mark Childress and Andrea LaRue on the staff of Majority Leader DASCHLE, and David Hoppe on the staff of Republican Leader LOTT. I would also like to thank Markan Delrahim, Jeff Taylor, Stuart Nash, and Leah Belaire with Senator HATCH, the ranking member of the Judiciary Committee. Melody Barnes and Esther Olavarria with Senator KENNEDY, Neil McBride, and Eric Rosen with Senator BIDEN, Bob Schiff with Senator FEINGOLD, and Stacy Baird and Beth Stein with Senator CANTWELL. I also want to thank Bill Jensen of the Legislative Counsel's office.

Finally, I would like to thank my own Judiciary Committee staff, especially Bruce Cohen, Beryl Howell, Julie Katzman, Ed Pagano, John Elliff, David James, Ed Barron, Tim Lynch, Susan Davies, Liz McMahon, Manu Bhardwaj, and Tara Magner. These are people who are more than just accomplished Senate staffs, they are close personal friends.

I think of the way they have worked, also, with personal office staff such as Luke Albee, J.P. Dowd, David Carle, and others. These are dear friends, but they are also people who bring such enormous expertise—expertise they had in their other careers before they came to the Senate, and how helpful this is.

Mr. President, we are about to vote and we will vote as a matter of minutes. I want us to think just for a moment why we are here. We have all

shared the sadness, the horror of September 11. We are seeing Members of Congress and staffs threatened, tragic deaths in the Postal Service, those who died in the Pentagon, those who died at the Twin Towers.

It is also almost a cliche to say America under attack, but that is what it is. Each of us has a job helping to respond to that. We are not Republicans or Democrats in that, we are Americans preserving our Nation and preserving our democracy. But, you know, we preserve it not just for today, we preserve it for the long run. That presents the kind of questions we have to answer in a bill such as this.

I suspect terrorist threats against the United States will exist after all of us, all 100 of us, are no longer serving in the Senate. It is a fact of life. It will come from people who hate our democracy, hate our diversity, hate our success. But that doesn't mean we are going to stop our democracy, our diversity, or our success.

Think what we cherish in this Nation. Our first amendment, for example, giving us the right to speak out about what we want—as we want. How many countries even begin to give that freedom?

Also, in that same first amendment, the right to practice any religion we want, or none if we want.

The leaders of the Judiciary Committee, Senator HATCH and I, belong to different religions which we hold deeply. I think we gain a great deal of inner strength from our respective faiths. But we know we are not judged by our religion. That is something we must protect and hold. We are judged by how well we do in representing our States and our Nation.

Because we face terrible terrorist attacks today, we should not succumb tomorrow by giving up what makes us a great nation. That has been my benchmark throughout the work I have done in this bill.

I spoke of the people who bring so much to this. I was just talking with Beryl Howell, a brilliant lawyer, who, with Bruce Cohen, has led our team on all this. She is a former prosecutor. How much she learned from her prior experiences and how much she brought here. Bruce Cohen, who was in private practice and came here, probably is as knowledgeable about Senate practice as anybody I know of, and he has brought that knowledge here. There are so many others I could name.

I have to think of my own case. Probably my 26 years here in the Senate, in many ways led up to this moment because I have never brought more of my own experiences or knowledge to bear than on this.

There was a rush, an understandable and even, some may say, justifiable rush, to pass legislation immediately after these terrible events. I understand that, the United States having been attacked within our borders for the first time, really, by an outside power since the War of 1812—attacked terribly, devastatingly. Who can forget the pictures we saw over and over again on television?

So I can understand the rush to do something, anything. But I used every bit of credibility I had as a Senator to say, wait, let us take time. I applaud people such as Senator DASCHLE who, using his great power as majority leader, said we will take the time to do this right, and backed me up on this. Other Senators from both sides of the aisle said, OK, let's work together.

I know the Senator from Utah shared the same anger that I did at the terrorists, and perhaps had been reluctant at first to join with me on that. But then the Senator from Utah and I worked day and night, weekends, evenings, and everything else to put together the best possible bill.

We worked with our friends and our colleagues in both parties in the other body. Ultimately, we do nothing to protect America if we pass a bill which for short-term solutions gives us long-term pain by destroying our Constitution or our rights as Americans.

There are tough measures in this legislation. Some may even push the envelope to the extent that we worry. That is why we put in a 4-year sunset. We have also built in constitutional checks and balances within the court system and within even some of the same agencies that will be given new enforcement powers. But we also will not forget our rights and responsibilities and our role as U.S. Senators.

We will not forget our role and our responsibilities as Senators to do oversight. Senator HATCH and I are committed to that. We will bring the best people from both sides of aisle, across the political spectrum, to conduct effective oversight.

I have notified Attorney General Ashcroft and Director Mueller that we will do that to make sure these powers are used within the constitutional framework to protect all of us I said earlier on this floor what Benjamin Franklin said: that the people who would trade their liberties for security and deserve neither.

We will enhance our security in this bill, but we will preserve our liberties. How could any one of us who have taken an oath of office to protect the Constitution do otherwise?

Like the distinguished Presiding Officer, I have held different elective offices. As the distinguished Presiding Officer knows, we take seriously our duties and our roles in each of those. He was a Member of the House and was the Governor of one of the original 13 States. I was a prosecutor and am a U.S. Senator from the 14th State. But all of us take this responsibility, because none of us are going to be here forever.

I want to be able to look back at my time in the U.S. Senate and be able to tell my children, my grandchildren, and my friends and neighbors in Vermont—the State I love so much—that I came home having done my best.

We have so much in this country—so much. But it is our rights and our Constitution that give us everything we have, which allows us to use the genius of so many people who come from different backgrounds and different parts of the world. That makes us stronger. We become weak if we cut back on those rights.

We have had some difficult times in our Nation where we have not resisted the temptation to cut back. Here we have. The American people will know that this Congress has worked hard to protect us with this bill.

I will vote for this legislation knowing that we will continue to do our duty, and to follow it carefully to make sure that these new powers are used within our Constitution.

I suggest that all time be yielded, and that we be prepared to vote. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will read the bill for the third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Louisiana (Ms. LANDRIEU) is necessarily absent.

The PRESIDING OFFICER (Mr. JOHNSON). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 98, nays 1, as follows:

[Rollcall Vote No. 313 Leg.]

YEAS—98

Akaka	Dorgan	McCain
Allard	Durbin	McConnell
Allen	Edwards	Mikulski
Baucus	Ensign	Miller
Bayh	Enzi	Murkowski
Bennett	Feinstein	Murray
Biden	Fitzgerald	Nelson (NE)
Bingaman	Frist	Nelson (FL)
Bond	Graham	Nickles
Boxer	Gramm	Reed
Brown	Grassley	Reid
Brownback	Gregg	Roberts
Bunning	Hagel	Rockefeller
Burns	Harkin	Santorum
Byrd	Hatch	Sarbanes
Campbell	Helms	Schumer
Cantwell	Hollings	Sessions
Carnahan	Hutchinson	Shelby
Carper	Hutchison	Smith (NH)
Chafee	Inhofe	Smith (OR)
Cleland	Inouye	Snowe
Clinton	Jeffords	Specter
Cochran	Johnson	Stabenow
Collins	Kennedy	Stevens
Conrad	Kerry	Thomas
Corzine	Kohl	Thompson
Craig	Kyl	Thurmond
Crapo	Leahy	Torricelli
Daschle	Levin	Voinovich
Dayton	Lieberman	Warner
DeWine	Lincoln	Wellstone
Dodd	Lott	Wyden
Domenici	Lugar	

NAYS—1

Feingold

NOT VOTING—1

Landrieu

The bill (H.R. 3162) was passed.

Mr. COCHRAN. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2002

The PRESIDING OFFICER (Mr. JOHNSON). Under the previous order, the Appropriations Committee is discharged from consideration of H.R. 2330 and the Senate will proceed to its consideration.

The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2330) making appropriations for agriculture, rural development, Food and Drug Administration, and related agencies programs for fiscal year ending September 30, 2002, and for other purposes.

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

The assistant legislative clerk proceeded to call the roll.

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

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

RECESS

Mrs. MURRAY. Mr. President, I ask unanimous consent that the Senate stand in recess for 30 minutes.

There being no objection, the Senate, at 2:31 p.m., recessed until 3:01 p.m., and reassembled when called to order by the Presiding Officer (Mr. NELSON of Florida).

AMENDMENT NO. 1969

Mr. KOHL. Mr. President, pursuant to yesterday's unanimous consent agreement, I rise to offer the text of S. 1191 as reported by the Senate Appropriations Committee as a substitute amendment for H.R. 2330, the fiscal year 2002 appropriations bill for Agriculture, Rural Development, Food and Drug Administration, and related agencies. The text of S. 1191 is at the desk and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Wisconsin [Mr. KOHL], for himself and Mr. COCHRAN, proposes an amendment numbered 1969.

The PRESIDING OFFICER. Under the previous order, the amendment is agreed to.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. KOHL. Mr. President, I am pleased to present to the Senate, the fiscal year 2002 appropriations bill for agriculture, rural development, the Food and Drug Administration, and related agencies. This bill was approved by the Appropriations Committee without dissent, and I hope it will receive the support of all Senators. I believe this bill strikes an appropriate balance of programs, consistent with the interests of Senators, to meet the needs of the farm sector, the environment, and rural America generally; nutrition assistance to our Nation's most vulnerable citizens; provide adequate resources to the Food and Drug Administration for protection of our food supply and other aspects of public health; and to support other national and international priorities.

This bill provides $73.9 billion in new budget authority for both mandatory and discretionary programs under our subcommittee's jurisdiction, and is within our 302(b) allocation. This bill is $2.8 billion below the level provided for fiscal year 2001, and is $78 million below the President's request. Let me restate, this bill is below the President's request.

Although this bill is $2.8 billion below the level provided last year, I should explain that the fiscal year 2001 bill included $3.6 billion in emergency spending for natural disaster and market loss related assistance to farmers and rural communities. No emergency funding is provided in the bill now before the Senate, and when compared to the non-emergency spending for fiscal year 2001, we are providing an increase of approximately $850,000. That amount represents an increase of slightly more than 1 percent from the previous year.

Before I go any further, I want to publicly thank my friend from Mississippi, Senator COCHRAN, ranking member on the Subcommittee, for his help and guidance. I also want to thank his staff: Rebecca Davies, minority clerk for the subcommittee, Martha Scott Poindexter, and Rachelle Schroder. Without their help and expertise, presentation of this bill to the Senate today would not have been possible. I owe a great deal of gratitude to Senator COCHRAN and his staff, as do all Senators.

Mr. President, when someone refers to this bill simply as the "Agriculture" appropriations bill, one might be left with the impression that it relates only to programs important to the farming community. While this bill does much to support our Nation's farmers, it also does much more. This bill provides substantial funding for agriculture research, including human nutrition research, biotechnology, energy alternatives, and many other important areas of inquiry. It also provides increases in conservation programs that protect our soil, water, and air resources, including examination of global change, and other critical aspects of environmental protection.

This bill also supports rural communities through economic development programs and assistance for basic needs such as housing, electricity, safe drinking water and waste disposal systems, and to help move rural America into the information age by promoting new technologies in the area of telecommunications and internet services. More and more, Americans are seeking relief from the congestion and sprawl of urban centers, and with the proper tools, rural America holds great promise for viable job opportunity alternatives. Programs in this bill do much to help rural communities provide the infrastructure necessary to create those jobs.

In addition, funding in this bill supports many nutrition and public health related programs. These include the food stamp, school lunch, and other nutrition assistance programs such as the Women, Infants, and Children program—WIC. This bill also provides funding for the Food and Drug Administration, which includes an increase for the Office of Generic Drugs to help make lower cost medications available to Americans as quickly as possible. Funding for the Food and Drug Administration, and other agencies, included in this bill will also help guarantee that the food Americans eat is not only the most nutritious and affordable in the world, but that it is also the safest.

Assistance in this bill does not stop at our shores. This bill also includes a number of international programs such as Public Law 480, which provide humanitarian food assistance to people in dire need around the world. This bill also supports international trade through a number of programs designed to open, maintain, and expand markets for U.S. production overseas.

Before I describe some of the specific program included in this bill, let me offer a few observations in view of recent events. World headlines this past year have described the devastation to the rural sector of the United Kingdom and other areas where foot and mouth disease outbreaks have raged out of control. Should such outbreaks occur in this country, the effect to the farm sector, and the general economy, would be staggering. Thankfully, this country has a strong set of safeguards to keep our shores safe from problems such as foot and mouth disease. But our safeguards are only as strong as the weakest part.

More recently, we all witnessed the horrific events of September 11. Suddenly, we were reminded that the significant concerns were held, in regard to accidental introductions of exotic pests and disease, may pale in comparison to what could befall this country by design. This is true for protection of our food supply, and in order to ensure that our public health system has the resources for immediate response to any threat at any time.

Last week, events occurring in the United States Senate, itself, reminded us of the need to keep strong our nation's defenses in regard to public health and safety. This bill, with jurisdiction for the food and Drug administration, the Food Safety Inspection

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