Senator from Wisconsin, and I would have loved to have had his amendment. Actually, I would have done it probably differently than that. But we had a whole lot of places where we won and some where we lost.

I can tell you right now, if we start unraveling this bill, we are going to lose all the parts we won and we will be back to a proposal that was blatantly unconstitutional in many parts. So I join, with no reluctance whatsoever, in the leader's motion.

Mr. DASCHLE. Madam President, I move to table.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Madam President, on this bill there was not a single moment of markup or vote in the Judiciary Committee. I accepted that because of the crisis our Nation faces. This is the first substantive amendment in the Senate on this entire issue, one of the most important civil liberties bills of our time, and the majority leader has asked Senators to not vote on the merits of the issue. I understand the difficult task he has, but I must object to the idea that not one single amendment on this issue will be voted on the merits on the floor of the Senate.

What have we come to when we don't have either committee or Senate deliberation on amendments on an issue of this importance?

I yield the floor, and I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back.

Mr. DASCHLE. Madam President, I move to table the amendment.

Mr. LEAHY. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from New Mexico (Mr. DOMENICI), the Senator from South Carolina (Mr. THURMOND), and the Senator from Mississippi (Mr. LOTT) are necessary absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 83, nays 13, as follows:

[Rollcall Vote No. 299 Leg.]

YEAS—83

Akaka	Brownback	Clinton
Allard	Bunning	Cochran
Allen	Burns	Conrad
Baucus	Byrd	Craig
Bayh	Campbell	Crapo
Bennett	Carnahan	Daschle
Biden	Carper	DeWine
Bond	Chafee	Dodd
Breaux	Cleland	Dorgan
Edwards	Kennedy	Reid
Ensign	Kerry	Roberts
Enzi	Kohl	Rockefeller
Feinstein	Kyl	Santorum
Fitzgerald	Landrieu	Sarbanes
Frist	Leahy	Schumer
Graham	Lieberman	Sessions
Gramm	Lincoln	Shelby
Grassley	Lugar	Smith (NH)
Gregg	McCain	Smith (OR)
Hagel	McConnell	Snowe
Hatch	Mikulski	Stevens
Hollings	Miller	Thomas
Hutchinson	Murkowski	Thompson
Hutchison	Murray	Torricelli
Inhofe	Nelson (FL)	Voinovich
Inouye	Nelson (NE)	Warner
Jeffords	Nickles	Wyden
Johnson	Reed	

NAYS—13

Bingaman	Dayton	Specter
Boxer	Durbin	Stabenow
Cantwell	Feingold	Wellstone
Collins	Harkin	
Corzine	Levin	

NOT VOTING—4

Domenici	Lott
Helms	Thurmond

The motion was agreed to.

Mr. LEAHY. I move to reconsider the vote.

Mr. DASCHLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEAHY. Madam President, so we understand where we are, there is still a fair amount of time on the bill that the Senator from Utah and I have and we have committed to Senators on both sides of the aisle who need time. The remaining time is for the Senator from Wisconsin who has three more amendments with the same time as he had in the last amendment.

The Senator from Massachusetts has asked for 5 minutes. I understand we have three more amendments that would take probably an hour or so per amendment with the vote if the Senator from Wisconsin wishes to use all his time, and he has a right to do that.

Once those are disposed of, the Senator from Utah and I are probably prepared to yield back our time.

I yield 5 minutes to the Senator from Massachusetts.

Mr. KERRY. Madam President, it was depending entirely on what the Senator from Wisconsin was doing. I reserve that now and see where we are heading.

Mr. LEAHY. I yield the floor.

Mr. FEINGOLD. Madam President, it is my intention to offer two more amendments, not the third amendment. I believe the time for each of these amendments could be less than the full time allotted. We have a fair amount of interest, but I didn't expect as much debate. I think the last two could be expedited, and I am prepared to proceed, if that is what my colleagues desire.

AMENDMENT NO. 1900

I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Wisconsin [Mr. FEINGOLD] proposes an amendment numbered 1900.

Mr. FEINGOLD. I ask unanimous consent reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 21, line 14, insert "except that, in such circumstances, the order shall direct that the surveillance shall be conducted only when the target's presence at the place where, or use of the facility at which, the electronic surveillance is to be directed has been ascertained by the person implementing the order and that the electronic surveillance must be directed only at the communication of the target," after "such other persons".

Mr. KERRY. For the purpose of planning, could the Senator give us a sense of both amendments and how long he thinks he will talk.

Mr. FEINGOLD. I have about 12 minutes on this amendment subject to any response to that and approximately the same on the second amendment.

Mr. KERRY. I thank the Chair.

Mr. FEINGOLD. Madam President, this amendment has to do with what is called roving wiretap, or multipoint surveillance authority. This is one of the first things Attorney General Ashcroft asked for in the first days after the September 11 attack and gave the example of a terrorist using throwaway cell phones and the need for continued roaming wiretap authority to allow the FBI to keep up with the ready availability of this new technology.

First, let me say I have a lot of sympathy for the idea of updating this area of the law. Obviously, it is needed in light of changes in technology. It is vitally important for Members of the Senate to understand that roving wiretap authority is already available for criminal investigations under title III. It is in title 18, section 2518(11) and (12). The Attorney General doesn't need nor has he asked for any new roving wiretap authority for criminal investigations. He already has it.

What the bill does in Section 206 is provide similar authority in investigations under the Foreign Intelligence Surveillance Act, known as FISA. I am not opposed to expanding existing roving wiretap authority to include FISA investigations, but I am very concerned that Section 206 does not include a key safeguard that was part of the roving wiretap authority when it was added to title III in 1986. That protection minimizes the possible misuse of the authority, whether intentional or unintentional, to eavesdrop on the conversations of individuals who are not the subject of the investigation.

Let me read from the Senate Judiciary Committee's report on the legislation that granted roving wiretap authority:

Proposed subsection 2518(12) of title 18 provides, with respect to both "wire" and "oral" communications, that where the federal government has been successful in obtaining a relaxed specificity order, it cannot begin the interception until the facilities or place from which the communication is to be intercepted is ascertained by the person implementing the interception order.

In other words, the actual interception could not begin until the suspect begins or evidences an intention to begin a conversation.

It further reads:

It would be improper to use this expanded specificity order to tap a series of telephones, intercept all conversations over such phones and then minimize the conversations collected as a result. This provision puts the burden on the investigation agency to ascertain when the interception is to take place.

It seems to me that Congress struck the right balance in that provision. It recognized the needs of law enforcement, but also recognized that rights of innocent people were implicated and designed a safeguard to protect them.

When Congress passed FISA in 1978 it granted to the executive branch the power to conduct surveillance in certain types of investigations without meeting the rigorous probable cause standard under the Fourth Amendment that is required for criminal investigations. Investigations of agents of foreign powers were different. There is a lower threshold for obtaining an order from the FISA court. But I don't think that roving wiretap authority under FISA should be less protective of the constitutional rights of innocent people who are not the subject of the investigation than the authority that Congress intended to grant in a standard criminal investigation.

My amendment takes the safeguard from Title III—from current law—and includes it in the FISA roving wiretap authority provision. The amendment simply provides that before conducting surveillance, the person implementing the order must ascertain that the target of the surveillance is actually in the house that has been bugged, or using the phone that has been tapped.

Let me give a few examples of how this would work, which should also show why it is necessary. Indeed, it may be constitutionally required. If the government receives information that the target of the FISA investigation is making phone calls from a particular bank of pay phones in a train station, it may set up wiretaps at all the phones in that bank, but may only listen in on a particular phone that the subject is using. Before beginning the actual surveillance it must know that the suspect is using a particular phone. Otherwise, on the basis of a report that a terrorist has been using a particular bank of pay phones, the private conversations of innumerable innocent Americans with absolutely no connection to the investigation would be subject to government scrutiny. That violates their Fourth Amendment rights. Similarly, the Government should not be able to conduct surveillance on all payphones in a neighborhood frequented by a suspected terrorist or on a particular payphone all day long while innocent people use it.

Another example. Suppose a target of a FISA investigation has the practice of using a neighbor's or relative's phone. Under my amendment, the Government would not be able to listen in on all calls from that phone, but only those taking place when the target is in that person's home. Likewise, if the government believes that the target uses computers in a library, it can only monitor the one that the terrorist is actually using, not all the computers in that facility even when the terrorist is not there.

I don't believe this amendment should affect the Government's authorization to monitor a new cell phone obtained by the target. If the phone is in the possession of the target or is registered to the target, then the person implementing the surveillance has ascertained that the facility is being used by the target. They could do it, and I support that.

Now, it has been pointed out to me that in 1999 this safeguard was removed from Title III with respect to wiretaps but left in place with respect to bugs. The change was made in the conference report of an intelligence authorization bill, without consideration by the Senate Judiciary Committee.

I remind my colleagues again that my amendment was part of the roving wiretap authority that Congress granted federal law enforcement in criminal investigations in 1986. It contains a standard that as far as we know served law enforcement adequately in conducting effective surveillance on very sophisticated criminal organizations, including the mafia and drug importation and distribution organizations. I submit that if this standard is not sufficient, we would have seen an open effort to change it, but we didn't. Even after the change made in 1999 without discussion or debate, the standard remains in effect for bugs placed in homes or businesses. Without this protection, Section 206 threatens the rights of innocent people.

If law enforcement has been significantly impaired in conducting effective surveillance in criminal investigations under the roving wiretap provision in current law, we should be shown specific evidence of its shortcomings. But if it has not been impaired, then there is no reason not to include a similar safeguard in the roving wiretap authority under FISA.

I urge my colleagues to take a close look at this amendment. It is reasonable, it appropriately reflects current law, but it also allows for updating to face the reality of new technology and all the technologies that are implicated here. And it protects the constitutional rights of people who are not the subjects of an investigation.

Mr. WELLSTONE. Will the Senator yield for a question?

Mr. FEINGOLD. Yes.

Mr. WELLSTONE. Again, I am not a lawyer. I do not think I understood exactly all the argument you were making.

Are you saying there has to be some standard of proof? That before conducting surveillance, law enforcement has to make sure? In other words, before you actually wiretap a phone or bug a house or a home, the target of the surveillance has to be in that home you are bugging?

Mr. FEINGOLD. No. Let's say somebody goes to their neighbor's house to use their phone. They do that once or twice or whatever it might be. Our amendment makes sure this new provision doesn't open up that house and everybody in it and every phone call they have in the house to unlimited Government surveillance. It requires what has been normally required under the law, that the law enforcement people ascertain that the person is in the house at the time so it is credible that they would be using that phone again.

Mr. WELLSTONE. In other words, other people who are in the house who have nothing to do with the target of surveillance, their conversations could be—

Mr. FEINGOLD. Their conversations could and undoubtedly would be, without some protection.

Mr. WELLSTONE. And the same thing for the bugging?

Mr. FEINGOLD. Exactly.

Mr. WELLSTONE. So you are trying to minimize the misuse of authority. It might be unintentional?

Mr. FEINGOLD. Absolutely. There are standards, as I indicated in my statement. There have been rules about how law enforcement has to ascertain, whether it be at a phone bank or in somebody else's home, that there is a reasonable belief that the individual is actually there. Without that kind of rule, what we are doing is not just extending this authority to the reality that people have cell phones and move around and use different phones of their own, but it takes us into an area that, frankly, prior to September 11 we would never have dreamed of allowing.

Mr. WELLSTONE. Madam President, if I could take 2 minutes —I ask the Senator from Wisconsin, might I have 2 minutes?

Mr. FEINGOLD. Yes. Madam President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be.

The yeas and nays were ordered.

Mr. FEINGOLD. I yield 2 minutes.

Mr. WELLSTONE. My colleague is saying we have to be very careful about not eavesdropping on the conversations of innocent individuals.

Again, we all are painfully aware of September 11. I personally think there is much in this bill that is good, that we need to do. But I think all the Senator from Wisconsin is trying to do is achieve some balance and make sure we do not go above and beyond going after terrorists who are trying to kill Americans and instead end up eavesdropping on innocent people in our country.

I think the vast majority of the people in the country, if they understood what this amendment was about, would support this amendment. I do not think passing this amendment does

any damage whatsoever to much of what is in this bill, which is so important.

So, again, I hope Senators will support this amendment on the merits. I think it is a very important amendment. I thank the Senator from Wisconsin.

Mr. FEINGOLD. I thank the Senator from Minnesota very much for his help, and I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? The Senator from Utah.

Mr. HATCH. Madam President, under current law, law enforcement has so-called-roving or multi-point surveillance authority for criminal investigations under title III, but FISA does not have comparable provisions for agents investigating foreign intelligence. Roving interceptions are tied to a named person rather than to any particular communications facility or place. Today's bill adds this vital authority to FISA.

This authority is critical for tracking suspected spies and terrorists who are experts in counter-surveillance methods such as frequently changing locations and communications devices such as phones and computer accounts.

It simply makes no sense that our wire-tapping statute recognizes this problem, and provides roving wiretap authority for surveillance of common criminals, but makes no provision for roving authority to monitor terrorists under the FISA statute.

The proposed amendment would not succeed in its stated goal of harmonizing the standard between title III wiretaps and FISA wiretaps. The proposed amendment would put a requirement on the interception of wire or electronic communications under a FISA warrant that does not exist in the title III context—a requirement that the law enforcement officer implementing the wiretapping order personally ascertain that the target of the order is using a telephone or computer, before the monitoring could begin.

This requirement is operationally unworkable. The way that roving orders are implemented, requires that law enforcement officers have the ability to spot check several different telephones in order to determine which one is being used by the target of the order. The language proposed in this amendment does not give law enforcement officers the ability to do so. In fact, they would be worse off under this proposal than they are under current law.

The goal of the roving wiretap provision is to give counter-terrorism investigators as much authority to conduct wiretaps as their counterparts have in conducting criminal investigations. This amendment defeats that goal by putting new, significant obstacles in the path of investigators attempting to investigate and prevent terrorist activities.

Mr. LEAHY. Madam President, Senator FEINGOLD provided invaluable assistance to the committee during our consideration of this legislation. He also held a hearing in his Constitution Subcommittee last week on the critical civil liberties issues raised by the Administration's anti-terrorism bill. I fully appreciate the depth of his concern and his desire to improve this bill.

The Attorney General and I agreed in principal that the roving, or multipoint, wiretap authority for criminal cases should be available under FISA for foreign intelligence cases. The need for such authority is especially acute to conduct surveillance of foreign spies trained in the art of avoiding surveillance and detection.

Senator FEINGOLD's amendment simply assures that when roving surveillance is conducted, the Government makes efforts to ascertain that the target is actually at the place or using the phone, being tapped. This is required in the criminal context. It is unfortunate that the Administration did not accept this amendment.

I hope all time could be yielded back on both sides.

Mr. FEINGOLD. It is my understanding the opponents have yielded all time.

The PRESIDING OFFICER. The Senator is correct.

Mr. LEAHY. If the Senator is going to yield his.

Mr. FEINGOLD. I yield my time.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. Madam President, I will just use a minute of my leader time to respond.

I have already made my argument on the first amendment. I, in the interest of time, am not going to repeat it. As I said before, I am sympathetic to many of these ideas, but I am much more sympathetic to arriving at a product that will bring us to a point where we can pass something into law. The record reflects the compromises that have been put in place, the very delicate balance that we have achieved. It is too late to open up the amendment process in a way that might destroy that delicate balance. For that reason, I move to table this amendment.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from South Carolina (Mr. THURMOND), and the Senator from New Mexico (Mr. DOMENICI) are necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote "yea."

The result was announced—yeas 90, nays 7, as follows:

[Rollcall Vote No. 300 Leg.]

YEAS—90

Akaka	Dorgan	Lott
Allard	Durbin	Lugar
Allen	Edwards	McCain
Baucus	Ensign	McConnell
Bayh	Enzi	Mikulski
Bennett	Feinstein	Miller
Biden	Fitzgerald	Murkowski
Bingaman	Frist	Murray
Bond	Graham	Nelson (FL)
Boxer	Gramm	Nelson (NE)
Breaux	Grassley	Nickles
Brownback	Gregg	Reed
Bunning	Hagel	Reid
Burns	Harkin	Roberts
Byrd	Hatch	Rockefeller
Campbell	Hollings	Santorum
Carnahan	Hutchinson	Sarbanes
Carper	Hutchison	Schumer
Chafee	Inhofe	Sessions
Cleland	Inouye	Shelby
Clinton	Jeffords	Smith (NH)
Cochran	Johnson	Smith (OR)
Collins	Kennedy	Snowe
Conrad	Kerry	Stabenow
Craig	Kohl	Stevens
Crapo	Kyl	Thomas
Daschle	Landrieu	Torricelli
Dayton	Leahy	Voinovich
DeWine	Lieberman	Warner
Dodd	Lincoln	Wyden

NAYS—7

Cantwell	Levin	Wellstone
Corzine	Specter	
Feingold	Thompson	

NOT VOTING—3

Domenici	Helms	Thurmond

The motion was agreed to.

Mr. LEAHY. I move to reconsider the vote.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, I ask unanimous consent to have printed in the RECORD a Statement of Administration Policy on the USA Act.

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

STATEMENT OF ADMINISTRATION POLICY

(This statement has been coordinated by OMB with the concerned agencies)

S. 1510—UNITING AND STRENGTHENING AMERICA (USA) ACT OF 2001

The Administration commends the Senate leadership and the Chairman and Ranking Member of the Senate Judiciary Committee on reaching agreement on S. 1510. This bill contains, in some form, virtually all of the proposals made by the Administration in the wake of the terrorist attacks perpetrated against the United States on September 11th. The Administration strongly supports passage of this bill.

The Administration's initial proposals, on which S. 1510 is based, were designed to provide Federal law enforcement and national security officials with the tools and resources necessary to disrupt, weaken, and counter the infrastructure of terrorist organizations, to prevent terrorist attacks, and to punish and defeat terrorists and those who harbor them. S. 1510 includes the provisions proposed by the Administration in three main areas: (1) information gathering and sharing; (2) substantive criminal law and criminal procedure; and (3) immigration procedures. The Administration strongly supports passage of these provisions. The Administration also supports valuable provisions, introduced by the Chairman of the

Senate Judiciary Committee, aimed at improving the Nation's border protection.

Information Gathering and Sharing

Existing laws fail to provide national security authorities and law enforcement authorities with certain critical tools they need to fight and win the war against terrorism. For example, technology has dramatically outpaced the Nation's statutes. Many of the most important intelligence gathering laws were enacted decades ago, in and for an era of rotary telephones. Meanwhile, the Nation's enemies use e-mail, the Internet, mobile communications and voice mail.

S. 1510 contains numerous provisions that address this problem by helping to make the intelligence gathering and surveillance statutes more "technology-neutral." Specifically, the bill updates the pen-register, trap-and-trace, and Title III-wiretap statutes to cover computer and mobile communications more effectively, while ensuring that the scope of the authority remains the same.

The bill also provides for nationwide scope of orders and search warrants, and other practical changes that will enable law enforcement to work more efficiently and effectively. In addition, the bill contains important updates of foreign intelligence gathering-statutes, with the identical goal of making the statutes technology-neutral. Even more important, the bill contains provisions to reduce existing barriers to the sharing of information among Federal agencies where necessary to identify and respond to terrorist threats. The ability of law enforcement and national security personnel to share this type of information is a critical tool for pursuing the war against terrorism on all fronts.

Substantive Criminal Law and Criminal Procedure

S. 1510 contains important reforms to the criminal statutes designed to strengthen law enforcement's ability to investigate, prosecute, prevent, and punish terrorism crimes. The bill would remove existing barriers to effective prosecution by extending the statute of limitations for terrorist crimes that risk or result in death or serious injury. The bill also creates and strengthens criminal statutes, including a prohibition on harboring terrorists and on providing material support to terrorists, and provides for tougher penalties, including longer prison terms and higher conspiracy penalties for those who commit terrorist acts. These provisions will help to ensure that the fight against terrorism is a national priority in our criminal justice system.

Border Protection and Immigration Procedures

S. 1510 also contains a number of provisions that would enhance the ability of immigration officials to exclude or deport aliens who engage in terrorist activity and improve the Federal government's ability to share information about suspected terrorists. Under the bill, those who contribute to or otherwise support terrorist organizations and terrorist activities would be denied admission to or deported from this country, and the Attorney General would be authorized to detain deportable persons who are suspected of terrorist activities pending their removal from the United States. In addition, the bill provides for access by the Department of State and the Immigration and Naturalization Service to criminal history records and related information maintained by the Federal Bureau of Investigation.

Money Laundering

Title III of S. 1510 includes money laundering and other financial infrastructure provisions, arising from a separate legislative proposal from the Administration. These provisions were added to this bill after unanimous approval was reached on these provisions in the Senate Banking Committee. The Administration supports the effort to strengthen the money laundering statutes to help combat terrorism, and supports virtually all of the proposals that are now included in S. 1510.

Pay-As-You-Go Scoring

Any law that would increase direct spending is subject to the pay-as-you-go requirements of the Balanced Budget and Emergency Deficit Control Act. Accordingly, S. 1510, or any substitute amendment in lieu thereof that would also increase direct spending, will be subject to the pay-as-you-go requirement. OMB's scoring estimates are under development. The Administration will work with Congress to ensure that any unintended sequester of spending does not occur under current law or the enactment of any other proposals that meet the President's objectives to reduce the debt, fund priority initiatives, and grant tax relief to all income tax paying Americans.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, I know the Senator from Wisconsin has another amendment. I have had requests for time on our side of the aisle from the distinguished Senator from Washington State, Ms. CANTWELL, for 7 minutes; the distinguished Senator from Massachusetts, Mr. KERRY, for 5 minutes; the distinguished Senator from Minnesota, Mr. WELLSTONE, for 5 minutes; the distinguished Senator from Michigan, Mr. LEVIN, for 2 minutes.

I mention that, not to lock that in, because the time is there, but just to give people an idea of where we are.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Madam President, is the Senator from Vermont proposing a time agreement?

Mr. LEAHY. No. I am just saying what people are requesting for time. I am trying to get some idea. A number of Senators have asked the distinguished leader and myself how much longer we are going to be here tonight.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. Madam President, let me just say, anybody who wishes to speak on this bill is certainly welcome to do so, but we will be here after the vote for anybody who wishes to accommodate any other Senator who would like to go home.

The hour is late. We have one more amendment, and then we have final passage. It is my hope that we can complete our work on the bill and certainly leave open the opportunity for Senators to express themselves. We will stay just as long as that is required. I hope, though, we can accommodate other Senators who may not feel the need to participate in further debate.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Madam President, I had spoken earlier this evening at some length about my concerns as to the procedures on the bill. I want to make a very few brief comments at this time.

I am concerned about the procedures on establishing a record which will withstand constitutional scrutiny. I shall not repeat the citations from decisions of the Supreme Court of the United States which I cited earlier, except to say that the Supreme Court has invalidated acts of Congress where there is not a considered judgment.

I understand the position of the majority leader in wanting to get this bill finished. Earlier this evening, I went through an elaborate chronology as to what has happened here. Nine days after September 11, the Attorney General submitted a bill. I had suggested hearings that week. The bill was submitted on September 20. We could have had hearings on September 21 and even on September 22, a Saturday. The Judiciary Committee had one hearing, a very brief one, on September 25.

I wrote the chairman of the committee two letters urging hearings, and there was ample time to have hearings to find out about the details of this bill. There was a Judiciary subcommittee hearing on October 3.

This bill was negotiated between the chairman and ranking member and the White House. The Judiciary Committee did not take up the bill. We have had ample time. This bill should have been before the Senate 2 weeks ago. If we had moved on it promptly after it was submitted on the 20th, we could have had hearings, perhaps some in closed session. We could have had a markup. We could have had an understanding of the bill.

When the Senator from Wisconsin has offered two amendments, which I have supported, I am inquiring as to what is the specific concern about law enforcement to preclude the adoption of the amendments of the Senator from Wisconsin and on the possible invasions of privacy that may result from the amendments not being adopted.

This is a very important bill. I intend to vote for it. I served 8 years on the Intelligence Committee, 2 years as chairman. I chaired the Subcommittee of Judiciary on Terrorism. I have been through detailed hearings and understand the problem we face, especially in light of the warning which was put out today, and I understand, with the approval of the President, that a terrorist act may happen in the United States or overseas in the next several days.

We do need adequate law enforcement powers. We should have finished this bill some time ago. But when the majority leader says he is concerned about procedure and not about substance, we are regrettably establishing a record where we have not only not shown the deliberative process to uphold constitutionality, but we are putting on the record a disregard for constitutionality and elevating procedure over substance, which is not the way you legislate in a constitutional area

where the Supreme Court of the United States balances law enforcement's needs with the incursion on privacy.

I feel constrained to make these comments. I hope yet that we can create a record which will withstand constitutional scrutiny.

Again, I intend to vote for the bill, but say again that this body ought to be proceeding in a way to establish the record. The worst thing that would happen is if we try terrorists, having used these procedures, and have the convictions invalidated. I have had experiences as a prosecuting attorney and know exactly what that means.

I want my concerns noted for the record. I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Madam President, I have 5 minutes, but I will not use it. I want to make two very quick points.

One, as a former prosecutor, I am sympathetic to the comments of the Senator from Pennsylvania. I think all of us ought to be respectful of what the Senator from Wisconsin has been talking about this evening.

I will vote for the bill. I am particularly sensitive to what the majority leader has said about the delicacy and the balance. Even within that delicacy, there are some very legitimate concerns.

It is my hope that when this goes to conference, some of the positions of the House will be thought about carefully and respected and that the Senate may even be able to improve what we have by taking those into account.

The second point is that there is within this legislation for the first time a very significant effort on money laundering. I will say to my colleagues that of all the weapons in this war and for all of our might militarily, the most significant efforts to ferret out and stop terrorists are going to come from the combination of information, intelligence that we gather and process, and from our ability to take unconventional steps, particularly those such as the money-laundering measures.

Senator LEVIN has done an outstanding job of helping to frame that, as has Senator SARBANES. The truth is, there are banking interests that even to this moment still resist living up to the standards of the Basel convention and the international standards about knowing your customer and being part of the law enforcement effort rather than a blockade to it.

We are told there may be some effort through the House to try to strip this out. It is my hope that the Senate will stand firm and hold to the full measure of what President Bush has asked us to do.

This will be a long effort, a painstaking effort. If we are serious about it, we have to have the law enforcement tools to make this happen.

One of the most critical ones is empowering the Secretary of the Treasury to do a reasonable, ratcheted, sort of geared process of addressing the concerns of ferreting out money laundering and taking the money away from these illicit interests around the globe. They are not just in terrorism. They are linked to money laundering, to illegal alien trafficking. They are all part of the same network which also funds the terrorists themselves.

We recognize that three-quarters of the heroin that reaches the United States comes from Afghanistan. The Taliban and al-Qaida were both trafficking in that heroin. These networks and the interconnectedness of them to the banking institutions, the financial marketplace, are absolutely essential for us as we fight a war on terrorism.

I hope this money-laundering component will be part of the final terrorism bill.

I yield whatever remaining time I have.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, I thank Chairman LEAHY, Chairman SARBANES, and members of their committees, for including our very strong anti-money-laundering provisions in the antiterrorism bill. The antiterrorism bill is simply incomplete unless it has anti-money-laundering provisions. Our provisions are strong provisions. They will help prevent terrorists and other criminals from using our banks to get their money into this country to fund their activities which are terrorizing this country.

There apparently is going to be a continuing effort in the House of Representatives to strip the anti-money-laundering provisions, which we have worked so hard on, from the antiterrorism bill. It is my understanding the White House will support keeping those provisions in the bill. Our committees have worked very hard to keep our anti-money-laundering provisions in the antiterrorism bill. Unless these provisions are in there, we are providing the executive branch with only half a tool box in the fight against terrorism.

Three years ago, the minority staff of the Permanent Subcommittee on Investigations which I now chair, began its investigation into money laundering using U.S. banks. Three years, three sets of hearings, two reports and a five-volume record on correspondent banking and money laundering was the result.

We found, not surprisingly, that U.S. banks have accounts for foreign banks and that the customers of those foreign banks can then use the U.S. banks to move their money. But if foreign banks do a poor job of screening their customers, criminals and terrorists can end up using U.S. banks for their criminal purposes.

We found that U.S. banks do a poor job in screening the foreign banks they accept as correspondent customers. Banks told us "a bank is a bank is a bank" but that's not true. There are good banks and bad banks. We found numerous banks where the bank was engaged in criminal activity or had such poor banking practices any criminal could be a customer. If a bad bank has a correspondent account with a U.S. bank, customers of that bad bank have access to U.S. financial system. Then criminals, including drug traffickers and terrorists, are able to use our financial systems to carry out their crimes.

In response to what we learned, we developed a bill—S. 1371, the Money Laundering Abatement Act introduced in early August.

It's a bipartisan bill, and I would like to recognize my cosponsors—in particular, Senator CHUCK GRASSLEY who has helped to lead the fight for including this money laundering legislation on this anti-terrorism bill. The cosponsors in addition to Senator GRASSLEY are: Senators SARBANES, KYL, DEWINE, BILL NELSON, DURBIN, KERRY and STABENOW. The provisions of this bill have been included in the legislation we are now considering.

We now know that the September 11 terrorists used our financial institutions and systems to help accomplish their ends. They used checks, credit cards, and wire transfers involving U.S. banks in Florida, New York, Pennsylvania. We've seen the photos of two of the terrorists using an ATM machine. Osama bin Laden has bragged about it. There are reports of large, unpaid credit card bills.

We know that current law is not tough enough in area of correspondent banking—the mechanism used to transfer money around the globe. There are too many holes that let in bad banks and bad actors, and we need to close them.

Look at what we've learned just in the last few days about bin Laden and al-Qaida. Several U.S. banks have had correspondent accounts for a Sundanese bank called the al Shamal Islamic Bank.

A 1996 State Department fact sheet states that bin Laden helped finance the bank in the amount of $50 million. A respected international newsletter on intelligence matters, Indigo Publications in March 16, 2000, said bin Laden remains a leading shareholder, although the al Shamal Bank apparently denies that.

Testimony in the February 2001 criminal trial of the 1998 terrorist bombings of U.S. embassies in Kenya and Tanzania, revealed that a bin Laden associate who handled financial transactions for al-Qaida testified al-Qaida had a half dozen accounts at al Shamal bank, one of which was in bin Laden's name. The witness at that trial said in 1994 a bin Laden associate took $100,000—in cash, U.S. Dollars—out of the Shamal Bank gave it to the witness and told him to deliver it to an individual in Jordan, which he did.

Another bin Ladin associate testified at the same trial that he received $250,000 by a wire transfer from the

Shamal Bank to his account in a U.S. bank in Arlington, Texas, to purchase a plane in the United States for bin Laden. He said he personally delivered the plane to bin Laden.

Why did this bank have a correspondent account with a U.S. bank? Why should we allow that to happen?

Even today, when you look at the al Shamal bank website, the bank is still active and advertises an extensive correspondent bank network. Three U.S. banks are listed. One of those banks has closed its account, but the two other banks continue to have accounts, although the accounts are frozen. Those accounts are now inactive because Sudan, home country of al Shamal, is on the list of terrorist countries and any business with the government of those countries has to be approved. But the accounts were operational at one point in time. Moreover, al Shamal bank has correspondent accounts with other foreign banks which have accounts with U.S. banks.

That means al Shamal bank can still be using the U.S. financial system through an account with a foreign bank that has a correspondent account with a U.S. bank. We call this nesting and it's a serious problem. It means the al Shamal bank and its customers can still use the U.S. banking system.

The bill before us would require U.S. banks to do a lot more homework on the banks they allow to have correspondent accounts. Under the anti-terrorism bill, it is my belief and my hope that a bank like al Shamal would never be granted a correspondent account at a U.S. bank.

The bill would also allow U.S. law enforcement to capture any illicit funds in a U.S. correspondent account. Now, if a criminal or terrorist has money in a foreign bank that has an account at U.S. bank and illicit money is being held in a U.S. account, law enforcement can't freeze that money unless the person is on the terrorist list or can prove that the foreign bank with the correspondent account is part of a criminal or terrorist act. That's an excessively hard threshold. This legislation would allow law enforcement to freeze money in correspondent accounts to the same extent they can freeze money in regular, individual accounts.

We need all the tools possible in our arsenal to fight the financial network of terrorism. The money laundering provisions in this bill close the loopholes in existing law and provide additional tools for law enforcement to use.

I thank Chairman SARBANES and the other members of the Banking Committee for including so much of the Levin-Grassley anti-money laundering bill, S. 1371, in the Committee's bill. I also thank Chairman LEAHY and the other Judiciary Committee members for including anti-money laundering provisions in title 3 of S. 1510, the anti-terrorism bill. Strengthening our anti-money laundering laws will strike a blow against terrorism by making it harder for terrorists to get the funds they need into United States; an anti-terrorism bill without these anti-money laundering provisions would be providing U.S. law enforcement with only half a toolbox against terrorism.

I would like to take a few minutes to discuss a few key provisions from the Levin-Grassley bill that have been incorporated into S. 1510. These provisions are based on an extensive record of hearings and reports issued in connection with investigations conducted over the past few years by the Permanent Subcommittee on Investigations, which I chair, into money laundering in the correspondent and private banking fields.

The four provisions I want to focus on are provisions that would ban foreign shell banks from the U.S. financial system; require U.S. financial institutions to exercise due diligence; add foreign corruption offenses to the crimes that can trigger a U.S. money laundering prosecution; and close a major forfeiture loophole involving foreign banks.

First is the shell bank ban in Section 313 of S. 1510. This provision is a very important one, because it attempts to eliminate from the U.S. financial system one category of foreign banks that carry the highest money laundering risks in the banking world today. Those are foreign offshore shell banks which, as defined in the bill, are banks that have no physical presence anywhere and no affiliation with any bank that has a physical presence. Our Subcommittee investigation found that 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, talk to bank officials, or freeze funds. Only a few countries now issue licenses for unaffiliated shall banks; they include Nauru, Vanuatu, and Montenegro. Nauru alone is believed to maintain licenses for somewhere between 400 and 3,000 offshore shell banks, none of which are being actively supervised, and some of which are suspected of laundering funds for Russian organized crime. A staff report that we issued in February of this year includes four detailed case histories of offshore shell banks that were able to open correspondent accounts at U.S. banks and used them to move funds related to drug trafficking, bribe money and financial fraud money. The possibility that terrorists are also using shell banks to conduct their operations is real and cannot be ignored. That is why this provision seeks to exclude shell banks from the U.S. financial system.

The provision flat-out prohibits U.S. financial institutions from opening accounts for shell banks. Period. It also requires U.S. financial institutions to take reasonable steps to make sure that other foreign banks are not allowing shell banks to use their U.S. accounts to gain entry to the U.S. financial system. The point is to prevent shell banks from getting direct or indirect access to U.S. financial accounts. The shell bank ban applies to both banks and securities firms operating in the United States, so that it is as broad and as effective as possible.

The provision directs the Treasury Secretary to provide regulatory guidance to U.S. financial institutions on the reasonable steps they have to take to guard against shell banks using accounts opened for other foreign banks. One possible approach would be for U.S. financial institutions to include a new section in the standard language they use to open accounts for foreign banks asking the foreign bank to certify that it will not allow any shell bank to use its U.S. accounts. The U.S. financial institution could then rely on that certification, unless it encountered evidence to the contrary indicating that a shell bank was actually using the account, in which case the financial institution would have to take reasonable steps to evaluate that evidence and determine whether a shell bank was, in fact, using the U.S. account.

The provision contains one exception to the shell bank ban, which should be narrowly construed to protect the U.S. financial system to the greatest extent possible. This exception allows U.S. financial institutions to open an account for a shell bank that is both affiliated with another bank that maintains a physical presence, and subject to supervision by the banking regulatory of that affiliated bank. This exception is intended to allow U.S. financial institutions to do business with shell branches of large, established banks on the ground that the regulator of the established bank can and does oversee all of that bank's branches, including any shell branch.

This exception could, of course, be abused. It is possible that an established bank in a jurisdiction with weak banking and anti-money laundering controls could open a shell branch in another country with equally weak controls and try to use that shell branch to launder funds in ways that are unlikely to be detected or stopped by the bank regulator in its home jurisdiction. In that case, while the shell bank ban exception would not flat-out bar U.S. financial institutions from opening an account for the shell branch, another provision would come into play and require the U.S. financial institution to exercise enhanced due diligence before opening an account for this shell bank. I would hope that U.S. financial institutions would not open such an account—that they would exercise common sense and restraint and refrain from doing business with a shell operation that is affiliated with a poorly regulated bank and inherently resistant to effective oversight.

Many U.S. financial institutions already have a policy against doing business with shell banks, but at least one

major U.S. bank, Citibank, has a history of taking on shell banks as clients. In order to keep those clients, Citibank tried very hard to expand the exception in this section to also allow U.S. accounts for shell banks affiliated with financial service companies other than banks, such as securities firms or financial holding companies. The broad exception was firmly and explicitly rejected by both the Senate Banking Committee and the House Financial Services Committee, because it would have opened a gaping loophole in the shell bank ban and rendered the ban largely ineffective. All a shell bank would have had to do to evade the ban was establish an affiliated shell corporation and call it a financial services company in order to be eligible to open a U.S. bank account. The Citibank approach would, for example, have allowed a shell bank established by bin Laden's financial holding company, Taba Investments, to open accounts at U.S. banks and securities firms. That would perpetuate the very problem that the Senate investigation identified in two of its shell bank case histories involving M.A. Bank and Federal Bank, each of which opened Citibank accounts in New York and used those accounts to deposit suspect funds associated with drug trafficking and bribery.

The exception to the shell bank ban is intended to be narrowly construed, and U.S. financial institutions will hopefully use great restraint in doing business with any shell bank that is not affiliated with a well known, well regulated bank. The shell bank ban is intended to close the U.S. financial marketplace to the money laundering risks posed by these banks, and it is my hope that other countries and the Financial Action Task Force on Money Laundering will follow the U.S. lead and take the same action in other jurisdictions.

The next provision is the due diligence requirement in Section 312 of S. 1510. This is another critical provision that tightens up U.S. anti-money laundering controls by requiring U.S. financial institutions to exercise due diligence when opening and managing correspondent and private banking accounts for foreign banks and wealthy foreign individuals.

The provision targets correspondent and private banking accounts, because these two areas have been identified by U.S. bank regulators as high risk areas for money laundering, and because Congressional investigations have documented money laundering abuses through them. For example, two weeks ago, I testified before the Banking Committee about a high risk foreign bank in Sudan that was able to open accounts at major banks around the world, including in the United States and, in 1994, used these accounts to funnel money to a bin Laden operative then living in Texas. On one occasion, he used a $250,000 wire transfer from the Sudanese bank to buy an airplane capable of transporting Stinger missiles, fly it to Sudan and deliver the keys to bin Laden. Six months earlier, we released a staff report with ten case histories of high risk foreign banks that used their U.S. accounts to transfer illicit proceeds associated with drug trafficking, financial fraud and other crimes. A year earlier, another staff report presented four case histories of senior foreign government officials or their relatives opening U.S. private banking accounts and using them to deposit millions of dollars in suspect funds. The bottom line is that U.S. banks need to do a much better job in screening the foreign banks and wealthy foreign individuals they allow to open accounts in the United States.

The due diligence provision would address that problem. It would impose an ongoing, industry-wide legal obligation on all types of financial institutions operating in the United States to exercise greater care when opening accounts for foreign banks and wealthy foreign individuals. Its due diligence requirements are intended to function as preventative measures to stop dubious banks and as well as terrorists or other criminals from using foreign banks' U.S. accounts to gain access to the U.S. financial system.

The general obligation to exercise due diligence with respect to all correspondent and private banking accounts is contained in paragraph (1). Paragraphs (2) and (3) then provide minimum standards for the enhanced due diligence that U.S. banks must exercise with respect to certain correspondent and private banking accounts. Paragraph (4)(B) gives the Treasury Secretary discretionary authority to issue regulatory guidance to further clarify the due diligence policies, procedures and controls required by paragraph (1).

The regulatory authority granted in this section is intended to help financial institutions understand what is expected of them. The Secretary may want to issue regulations that help different types of financial institutions to understand their obligations under the due diligence provision. However, one caveat needs to be made with respect to the Secretary's exercise of this regulatory authority, and that involves how it is to be coordinated with Section 5318(a)(6), which authorizes the Secretary to grant "appropriate exemptions" from any particular money laundering requirement. There are going to be many efforts made by various groups of financial institutions to win an exemption from the due diligence requirements in this section—from insurance companies, to money transmitters, to offshore affiliates of large foreign banks. But the Committee's and the Senate's clear intention is to cover all major financial institutions operating in the United States. That is why Chairman SARBANES changed the language in my bill, S. 1371, so that the due diligence requirement did not apply just to banks, but to all financial institutions as that term is defined in Section 5312(a)(2) of title 31. That broad coverage is exactly what is contemplated by this statute. The bottom line, then, is that the Secretary is intended to apply the due diligence requirements broadly to U.S. financial institutions, and not to grant an exemption without a very compelling justification.

This same reasoning also applies to the shell bank ban. There will be some that will seek one exemption or another from the ban, asking the Treasury Secretary to use the authority available under Section 5318(a)(6). Again, the intent of the Committee and this Senate is to enact as comprehensive a shell bank ban as possible to protect the United States from the money laundering threat posed by shell banks. That means that the Secretary should refrain from granting any exemption to the shell bank ban without a very compelling justification.

The third provision I want to discuss is the provision in Section 315 adding new foreign corruption offenses to the list of crimes that can trigger a U.S. money laundering prosecution. This is another important advance in U.S. anti-money laundering law. Right now, because foreign corruption offenses are not currently on the list of crimes that can trigger a U.S. money laundering prosecution, corrupt foreign leaders may be targeting U.S. financial institutions as a safe haven for their funds. This provision will make it clear to those who loot their countries, or accept bribes, or steal from their people, that their illicit money is not welcome here. Our banks do not want that money, and if it is deposited in U.S. banks, it is subject to seizure and the depositor may become subject to a money laundering prosecution.

The fourth provision would close a major forfeiture loophole in U.S. law involving foreign banks. This provision is in Section 319(a) of S. 1510. It would make a depositor's funds in a foreign bank's U.S. correspondent account subject to the same civil forfeiture rules that apply to depositors funds in other U.S. bank accounts. Right now, due to a quirk in the law, U.S. law enforcement faces a significant and unusual legal barrier to seizing funds from a correspondent account. Unlike a regular U.S. bank account, it is not enough for U.S. law enforcement to show that criminal proceeds were deposited into the correspondent account; instead, because funds in a correspondent account are considered to be the funds of the foreign bank itself, the government must also show that the foreign bank was somehow part of the wrongdoing.

That's not only a tough job, that can be an impossible job. In many cases, the foreign bank will not have been part of the wrongdoing, but that's a strange reason for letting the foreign depositor who was engaged in a wrongdoing escape forfeiture. And in those cases where the foreign bank may have

been involved, no prosecutor will be able to allege it in a complaint without first getting the resources needed to chase the foreign bank abroad.

Take, for example, the case of Barclays Bank which has frozen an account because of suspicious activity suggesting it may be associated with terrorism. If that account had been a correspondent account in the United States opened for Barclays Bank, U.S. law enforcement could have been unable to freeze the particular deposits suspected of being associated with terrorism, because the funds were in the Barclays correspondent account and Barclays itself was apparently unaware of any wrongdoing. That doesn't make sense. U.S. law enforcement should be able to freeze the funds.

Section 319(a) would eliminate that quirk by placing civil forfeitures of funds in correspondent accounts on the same footing as forfeitures of funds in all other U.S. accounts. There is just no reason foreign banks should be shielded from forfeitures when U.S. banks would not be.

Section 319 has many other important provisions as well, including provisions dealing with Federal Receivers, legal service on foreign banks and more.

I want to again thank Senator SARBANES and Senator LEAHY and their staffs for their hard work and cooperative spirit in bringing this bill to the floor and including the provisions of our bill in it.

I need to add that the hard work in passing this bill will be for naught if some of the banks have their way in the House and in Conference Committee. I'm very concerned with reports that there is an effort in the House to separate the money laundering and anti-terrorism bills, so money laundering will be considered separately. The banks should be working with us to figure out even more ways in which the money flow of terrorists can be shut down.

Madam President, I ask unanimous consent to print letters of support for this legislation and testimony from the FBI in the RECORD.

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

STATEMENT OF DENNIS M. LORMEL, CHIEF, FINANCIAL CRIMES SECTION, FEDERAL BUREAU OF INVESTIGATION, BEFORE THE HOUSE COMMITTEE ON FINANCIAL SERVICES, WASHINGTON, DC, OCTOBER 3, 2001

Correspondent banking is another potential vulnerability in the financial services sector that can offer terrorist organizations a gateway into U.S. banks just as it does for money launderers. As this Committee well knows, the problem stems from the relationships many U.S. Banks have with high risk foreign banks. These foreign banks may be shell banks with no physical presence in any country, offshore banks with licenses limited to transacting business with persons outside the licensing jurisdiction, or banks licensed and regulated by jurisdictions with weak regulatory controls that invite banking abuses and criminal misconduct. Attempts to trace funds through these banks are met with overwhelming obstacles. The problem is exacerbated by the fact that once a correspondent account is opened in a U.S. Bank, not only the foreign bank but its clients can transact business through the U.S. bank. As Congress has noted in the past, requiring U.S. banks to more thoroughly screen and monitor foreign banks as clients could help prevent much of the abuse in correspondent bank relationships.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, September 18, 2001.

Hon. CARL LEVIN,
Chairman, Permanent Subcommittee on Investigations, Committee on Governmental Affairs, U.S. Senate, Washington, DC.

Hon. CHARLES GRASSLEY,
Co-Chairman, Senate Drug Caucus, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN AND MR. CO-CHAIRMAN: We are writing in response to your recent letter to Attorney General Ashcroft concerning S. 1371, the Money Laundering Abatement Act. We appreciate your continued commitment to addressing the serious problem of money laundering in this country and abroad, as demonstrated by your introduction of S. 1371. As you indicated in your letter, the Attorney General has expressed the need to strengthen our money laundering laws. In his August 7th speech, the Attorney General stated: "The Department of Justice has identified several areas in which our money laundering laws need to be updated to more effectively combat organized crime and to better serve the cause of justice."

We were very pleased to see that one of the areas highlighted in the Attorney General's speech—the need to add to the list of foreign offenses that constitute predicate crimes for money laundering prosecutions—is included in S. 1371. This and other provisions in your bill would greatly improve our money laundering laws.

As the Attorney General also indicated in his speech, the Department of Justice has been developing its own proposal to update our money laundering laws and we hope to provide Congress with our own recommendations in the near future. We look forward to working with you in pursuing our mutual goal of strengthening and modernizing our money laundering laws to meet the challenges of this new century.

Thank you for your attention to this matter. If we may be of additional assistance, we trust that you will not hesitate to call upon us. The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the presentation of this report.

Sincerely,

DANIEL J. BRYANT,
Assistant Attorney General.

U.S. DEPARTMENT OF JUSTICE,
DRUG ENFORCEMENT ADMINISTRATION,
Washington, DC, September 20, 2001.

Hon. CARL LEVIN,
Chairman, Permanent Subcommittee on Investigations, Committee on Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for requesting our views on S. 1371, the "Money Laundering Abatement Act," which is designed to combat money laundering and protect the United States financial system by strengthening safeguards in private and correspondent banking.

We greatly appreciate your initiative in this important area and believe that several provisions of S. 1371 would be of particular benefit to DEA's efforts to combat money laundering. In addition, as Assistant Attorney General Bryant recently indicated in his letter to you, the Administration has been working for some time on a package of additional suggested money laundering amendments, which we hope to be able to share with you shortly.

We look forward to working with you to strengthen and improve the Nation's money laundering laws. If I can be of any further assistance, please do not hesitate to contact me. The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

ASA HUTCHINSON,
Administrator.

FEDERAL DEPOSIT
INSURANCE CORPORATION,
Washington, DC, September 7, 2001.

Hon. CARL LEVIN,
Chairman, Permanent Subcommittee on Investigations, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for the opportunity to comment on S. 1371, the Money Laundering Abatement Act. The Federal Deposit Insurance Corporation shares your concern about the damage to the U.S. financial system that may result from money laundering activities and we congratulate you for your leadership in this area.

As deposit insurer, the FDIC is vitally interested in preventing insured depository institutions from being used as conduits for funds derived from illegal activity. As you may know, in January of this year, the FDIC, together with the Department of the Treasury, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Department of State, issued Guidance On Enhanced Scrutiny For Transactions That May Involve The Proceeds Of Official Corruption. The FDIC is also an active participant in other working groups that seek more effective ways to combat money laundering.

S. 1371 is an important step in trying to preclude foreign entities from laundering money through U.S. financial institutions. S. 1371 would, in several ways, require U.S. financial institutions to identify foreign parties who open or maintain accounts with U.S. banks, such as through correspondent accounts or private banking accounts. The bill would also prohibit customers from having direct access to concentration accounts, and make it a crime to falsify the identity of a participant in a transaction with or through U.S. financial institutions. Correspondent and concentration accounts have the potential to be misused so as to facilitate money laundering, and the bill appropriately addresses these concerns.

One point we would like to raise is in relation to Section 3 of the bill. Section 3 provides for consultation between the Board of Governors of the Federal Reserve System and the Secretary of the Treasury, both in regard to devising measures to combat money laundering and defining terms relating to anti-money laundering measures. The FDIC believes that such consultation requirements should include the FDIC as well as the other Federal banking agencies.

Thank you again for the opportunity to provide our views on S. 1371. Please do not hesitate to contact Alice Goodman, Director of our Office of Legislative Affairs, at (202) 898-8730 if we can be of any further assistance.

Sincerely,

DONALD E. POWELL,
Chairman.

STATE OF MICHIGAN,
DEPARTMENT OF ATTORNEY GENERAL,
Lansing MI, September 25, 2001.

Hon: CARL LEVIN,
U.S. Senator, Russell Senate Office Bldg., Washington, DC.
Hon. CHUCK GRASSLEY,
U.S. Senator,
Hart Senate Office Bldg., Washington, DC.

DEAR SENATORS LEVIN AND GRASSLEY: I write to express my strong support for S1371, the Money Laundering Abatement Act. This is a prevalent problem that has allowed the criminal element to secrete the proceeds of criminal activity and to generate funds needed to facilitate and underwrite organized crime.

The bill will make it harder for foreign criminals to use United States banks to launder the proceeds of their illegal activity and allow investigators to detect, prevent, and prosecute money laundering. In particular, the bill strengthens existing anti-money laundering laws by adding foreign corruption offenses, barring U.S. banks from providing banking services to foreign shell banks, requiring U.S. banks to conduct enhanced due diligence, and making foreign bank depositors' funds in U.S. correspondence banks subject to the same forfeiture rules that apply to funds in other U.S. bank accounts.

Recent events highlighting the activities of foreign terrorists have demonstrated the necessity for his law. My colleagues in the U.S. Justice Department indicate that this and similar laws are essential if we are to succeed in our fight against organized crime, drug dealers, and terrorism. This bill is the result of lengthy hearings and congressional fact-finding that concluded that the regulations set forth in the bill are needed. The bill has my support, and I would urge its passage as soon as possible.

Sincerely yours,
JENNIFER M. GRANHOLM,
Attorney General.

STATE OF ARIZONA,
OFFICE OF THE ATTORNEY GENERAL,
Phoenix, AZ, August 2, 2001.

Hon. CARL LEVIN,
Russell Senate Office Building,
U.S. Senate, Washington, DC.
Hon. CHUCK GRASSLEY,
Hart Senate Office Building,
U.S. Senate, Washington, DC.

DEAR SENATORS LEVIN AND GRASSLEY: I write to express my views on the Money Laundering Abatement Act you are planning to introduce soon. This bill would provide much needed relief from some of the most pressing problems in money laundering enforcement in the international arena. The burdens it places on the financial institutions are well considered, closely tailored to the problems, and reasonable in light of the public benefits involved.

The bill focuses on the structural arrangements that allow major money launderers to operate. These include the use of shell banks and foreign accounts, abuse of private banking, evasion of law enforcement efforts to acquire necessary records, and of safe foreign havens for criminal proceeds. The approach is very encouraging, because efforts to limit the abuse of these international money laundering tools and techniques must come from Congress rather than the state legislatures, and because such measures attack money laundering at a deeper and more lasting level than simpler measures.

The focus on structural matters means that this bill's effects on cases actually prosecuted by state attorneys general are a relatively small part of the substantial effects its passage would have on money laundering as a whole. Nevertheless, its effects on money laundering affecting victims of crime and illegal drug trafficking would be dramatic. I will use two examples from my Office's present money laundering efforts.

My Office initiated a program to combat so-called "prime bank fraud" in 1996, and continues to focus on these cases. Some years ago, the International Chamber of Commerce estimated that over $10 million per day is invested in this wholly fraudulent investment scam. The "PBI" business has grown substantially since then. To date, my Office has recovered over $46 million in these cases, directly and in concert with U.S. Attorneys and SEC. Prime bank fraudsters rely heavily on the money movement and concealment techniques that this bill would address, particularly foreign bank accounts, shell banks, accounts in false identities, movement of funds through "concentration" accounts, and impunity from efforts to repatriate stolen funds. One of our targets was sentenced recently in federal court to over eight years in prison and ordered to make restitution of over $9 million, but without the tools provided in this bill, there is little hope that the victims will even see anything that was not seized for forfeiture in the early stages of the investigation.

My Office is now engaged in a program to control the laundering of funds through the money transmitters in Arizona, as part of the much larger problem of illegal money movement to and through the Southwest border region. This mechanism is a major facilitator of the drug smuggling operations. Foreign bank accounts and correspondence accounts, immunity from U.S. forfeitures, and false ownerships are significant barriers to successful control of money laundering in the Southwest.

Your bill is an example of the immense value of institutions like the Permanent Subcommittee of Investigations, because this type of bill requires a deeper understanding of the issues that comes from long term inquiries by professional staff. We who are involved in state level money laundering control efforts should be particularly supportive of such long term strategies because they are most important to the quality of life of our citizens.

I commend your efforts for introducing this important legislation and will assist you in anyway I can to gain its passage.

Yours very truly,
JANET NAPOLITANO,
Attorney General.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, I tell the distinguished Senator from Michigan and the distinguished Senator from Massachusetts, who made such strong and valid points on money laundering, we just received from the administration their statement of policy saying: This includes money laundering, other financial infrastructure provisions arising from separate legislative proposals. These provisions were added to this bill after unanimous approval to have these provisions in the Senate Banking Committee. The administration supports the effort to strengthen this—

And so on. They are extremely important, and I can assure both Senators that I will strongly support retention of this in conference.

The PRESIDING OFFICER. The Senator from Wisconsin.

AMENDMENT NO. 1901

Mr. FEINGOLD. Mr. President, I call up amendment No. 1901, which is at the desk.

The PRESIDING OFFICER (Mr. MILLER). The clerk will report.

The legislative clerk read as follows:

The Senator from Wisconsin [Mr. FEINGOLD] proposes an amendment numbered 1901.

Mr. FEINGOLD. I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To modify the provisions relating to access to business records under the Foreign Intelligence Surveillance Act of 1978)

Strike section 215 and insert the following:

SEC. 215. ACCESS TO BUSINESS RECORD UNDER FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

(A) IN GENERAL.—Section 502 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1862) is amended—

(1) in subsection (a), by striking "authorizing a common carrier" and all that follows through "to release records" and inserting "requiring a business to produce any tangible things (including books, records, papers, documents, and other items)";

(2) in subsection (b)(2)—

(A) in subparagraph (A), by striking "and" at the end;

(B) in subparagraph (B), by striking the period at the end and inserting: "; and"; and

(C) by adding at the end the following new subparagraph:

"(C) the records concerned are not protected by any Federal or State law governing access to the records for intelligence or law enforcement purposes."; and

(3) in subsection (d), by striking "common carrier, public accommodation facility, physical storage facility, or vehicle rental facility" each place it appears and inserting "business".

(b) CONFORMING AMENDMENT.—The text of section 501 of that Act (50 U.S.C. 1861) is amended to read as follows:

"SEC. 501. In this title, the terms 'agent of a foreign power', 'foreign intelligence information', 'international terrorism', and 'Attorney General' have the meanings given such terms in section 101.".

Mr. FEINGOLD. Mr. President, this amendment has to do with section 215 in the bill. It allows the Government, under FISA, to compel businesses to turn over records to assist in an investigation of terrorism or espionage. The provision makes two significant changes from current law. Under current law, the FBI can seek records from only a limited set of businesses—from public accommodations, such as hotels and motels, car rental companies, storage facilities, and travel records, such as those from airlines.

Current law also requires the FBI to demonstrate to the FISA court that the records pertain to an agent of a foreign power. The FBI cannot go on a fishing expedition of records of citizens of this country who might have had incidental contact with a target of an investigation. But under section 215 of this bill, all business records can be compelled to be produced, including those containing sensitive personal information such as medical records

from hospitals or doctors, or educational records, or records of what books someone has taken out of the library.

This is an enormous expansion of authority, compounded by the elimination of the requirement that the records have to pertain to an agent of a foreign power. Under this provision, the Government can apparently go on a fishing expedition and collect information on anyone—perhaps someone who has worked with, or lived next door to, or has been seen in the company of, or went to school with, or whose phone number was called by the target of an investigation.

So we are not talking here only about the targets of the investigation; we are talking about people who have simply had some incidental contact with the target. All the FBI has to do is to allege in order to get the order that the information is sought for an investigation of international terrorism or clandestine intelligence gathering. That is all they have to do, assert that—not to just get at the targets, but at people who have had any contact whatsoever with them.

On that minimal showing in an ex parte application in a secret court, 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 the police power, one that I do not think is warranted.

My amendment does not completely strike the provision. There are elements of it that I think have legitimacy. First, my amendment maintains the requirement that the records pertain to a target alleged to be an agent of a foreign power. This provides some protection for American citizens who might otherwise become the subject of investigations for having some innocent contact with a suspected terrorist.

Second, while the amendment maintains the expansion of the FISA authority to all business records, it also requires the FBI to comply with State and Federal laws that contain a higher standard for the disclosure of certain private information. The amendment makes it clear that existing Federal and State statutory protections for the privacy of certain information are not diminished or superseded by section 215.

There are certain categories of records, such as medical records or educational records, that Congress and State legislatures have deemed worthy of a higher level of privacy protection. Let me quickly give you a couple of examples. In California, there is a very detailed statutory provision governing disclosure of medical information to law enforcement authorities. Generally, the law requires either patient consent, or a court order, or a subpoena. Before issuing an order for the records to be produced, the court must, among other things, find good cause based on a determination that there is a reasonable likelihood that the records in question will disclose material information or evidence of substantial value in connection with the investigation or prosecution.

Montana is another State with strong statutory, and indeed constitutional, protections for medical records. It provides that medical records can only be obtained with an investigative subpoena signed by a judge, and that subpoena may be issued only when it appears upon the affidavit of the prosecutor that a compelling State interest requires it to be issued. In order to establish a compelling State interest, the prosecutor must state facts and circumstances sufficient to support probable cause to believe that an offense has been committed, and that the information relative to the commission of that offense is in the possession of the person or institution to whom the subpoena is directed.

My State of Wisconsin, along with many other States, has very strong library confidentiality laws which requires a court order for disclosure of public library system records.

Texas, for example, permits disclosure of library records "to a law enforcement agency or prosecutor under a court order or subpoena obtained after a showing to a court that: (A) disclosure of the record is necessary to protect the public safety; (B) the record is evidence of an offense or constitutes evidence that a particular person committed an offense."

Missouri and Nevada library records confidentiality laws both require that a court find "that the disclosure of such record is necessary to protect the public safety or to prosecute a crime."

South Carolina's library records confidentiality law permits disclosure "in accordance with a proper judicial order upon finding that disclosure of the records is necessary to protect public safety, to prosecute a crime, or upon showing of good cause before a presiding judge in a civil matter."

In short, our States have made policy judgments about the protection to which certain kinds of records are justified. We have Federal laws that express similar judgments—Federal Educational Records Privacy Act. Indeed, as I will mention, this bill provides new standards for the production of educational records in connection with terrorism investigations.

So my fear is that what section 215 does is effectively trump any and all of these State and Federal privacy protections. I think that is a result that most of our citizens and their State representatives would not countenance. So my amendment simply provides that this new authority to compel the production of business records through an order of a FISA court does not apply if another State or Federal law governs the law enforcement or intelligence access to the records.

To the extent that the records sought have no such statutory protection, the only effect this amendment would have is to ensure that the records actually pertain to the target. But I strongly believe that merely alleging that the records are needed for an intelligence investigation should not override other protections provided by State and Federal law.

I will quickly highlight the problem by referring to section 508 of this bill. That section, I think, would be rendered meaningless if section 215 is not amended as I propose.

The original version of section 508 proposed by the administration would have given the Attorney General the right to obtain the educational records of virtually any student without a court order. I and many other Senators had serious problems with that provision, and it was significantly changed before S. 1510 was introduced. Section 508 now does require a court order and does provide a specific showing that the Attorney General must make to obtain the order to get at these educational records. But if section 215 is enacted without my amendment a university could be ordered to turn over such records as "tangible things" on a much lower showing.

The administration asserts that it is too great a burden for the Government to abide by existing privacy protections and seek court orders to obtain certain sensitive information specifically identified by Congress and State legislators. I remind my colleagues that the protections I seek to preserve were carefully drafted and debated and enacted at a time when legislators could thoughtfully consider the full weight of granting such protections. We are now asked to set these protections aside with scant discussion of either the merits or the consequences of such a proposal, during a time of incredible strain on our democratic principles, and for an indeterminate length of time.

If my amendment is adopted, law enforcement will still have access to all of the information it seeks. But my amendment simply maintains the integrity of protections enacted by Congress and State legislatures for certain kinds of sensitive information to ensure that access to this information is given only where it is necessary. It makes sure that this provision does not become the platform or an excuse for a fishing expedition for damaging information on American citizens who are not the subjects of FISA surveillance.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. FEINGOLD. I yield 5 minutes to the Senator.

Mr. WELLSTONE. Mr. President, I say, again, to colleagues that this amendment the Senator from Wisconsin introduced makes sure that our Federal and State laws regarding certain sensitive privacy areas are not diminished or superseded by this provision.

The amendment of the Senator from Wisconsin goes to the heart of the concerns that a lot of the people we represent have. I imagine that the vote may be overwhelmingly in opposition to this amendment. That has been the pattern.

Again, I thank the Senator from Wisconsin for raising these questions. This is what we should be doing.

I conclude this way: I really think, in part, because of the kind of questions the Senator from Wisconsin has raised—again, I am not a lawyer—in looking at this bill, Mr. President, I say to Senator LEAHY, it seems to me he and others have done a great job and are doing everything possible to make this more balanced. There are so many good provisions in this bill that we need. I believe that.

I hope we can keep the sunset provision, which is so essential to oversight, because I think what is good is the provisions of this legislation that focus on combating terrorism and what is not quite so good is the parts of this bill that reach way beyond that.

Yes, there is a lot of good. I will support it. I will reserve final judgment of what comes out of the conference committee. I think we can make it better.

I thank my colleagues, Senator HATCH included, for their work. Sometimes people can honestly disagree. I know this is important. I know where we are as a nation, but the Senator from Wisconsin has raised important concerns tonight, and others as well. I hope we do better in conference.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I thank the Senator from Minnesota. He said it exactly right. Each of us who spoke on these amendments tonight cares just as much as everybody in this room about the fight against terrorism and stopping it. We just want to make sure we do not go beyond that goal with unnecessary language that intrudes on our civil liberties. That is it. That is all we are trying to do.

I am pleased to yield 5 minutes to the Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. Mr. President, I thank the Senator from Wisconsin for the time and his energies this evening. We all know that the hour is late and that there are many things we must accomplish in our acts to fight terrorism. This is probably one of the most significant pieces of legislation that affects our home-front activities in fighting that battle.

There are many good things in this bill. I am very proud of the authorizing language to triple the resources for our northern borders. I am very proud of the language in the bill that basically will 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. I ask unanimous consent that the column in the Washington Post be printed in the RECORD.

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

[From the Washington Post, Oct. 10, 2001]

WHEN CARE BEATS HASTE

The complex antiterrorism legislation that the administration sent Congress less than a month ago could reach the floors of both houses this week. The original proposal has been considerably improved since its hasty submission, but civil liberties groups continue to warn with cause that some of the detention and surveillance provisions would give the government more power than is either necessary or healthy.

Some of the members of both parties who helped construct the current compromises are likewise uneasy about their own handiwork, but reluctant to be seen as holding up a bill the administration insists it needs right away. The reluctance will be the greater now that the country is engaged in military action in Afghanistan; there is fear—we have no doubt well-founded—of retaliation. But dangerous moments are precisely the ones when it is most important that civil liberties be protected.

The House Judiciary Committee has dealt with the conflicting pressures in part by putting a kind of asterisk after the surveillance sections of the bill. It has "sunset" them, meaning the powers they confer will expire after two years unless a subsequent Congress, having seen how the powers work out, votes to extend them. The administration opposes the sunset provision and succeeded in keeping it out of the Senate version. But it's a reasonable compromise. A bill such as this is a balancing of risks—the risk of further attack versus the risk to civil liberties in seeking to forestall the attack. If the bill is as benign as the administration insists, it has nothing to fear from a sunset provision, which ought to be retained.

Parts of the administration proposal were sensible and are not in dispute: allowing the government in an age of cell phones to seek court approval for placing a wiretap on a person rather than a particular phone, for example. Others were drawn too loosely, and some still need work. The administration had sought authority to detain indefinitely non-citizens whom the attorney general thought even might be engaged in terrorism or other activities that endangered national security. That power has been greatly circumscribed. A person not charged with a crime after seven days can be held only if the government is moving to deport him. The question, which the bills don't clearly answer, is how long, without judicial determination, can it hold him then?

Wiretap authority now is easier to get for foreign intelligence than for law enforcement purposes. The legislation would make it easier still. 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—in such a way as to make such surveillance far more commonplace than now. Related issues have to do with the sharing of law enforcement and intelligence information among government officials. There are ways to provide the broader authority the government says it needs while hedging against its abuse; in our view, not all of those have been fully explored.

So too with the power the bill would give law enforcement officials to obtain records of an individual's Internet use, including addresses of e-mail sent and received. Phone records are now available to law enforcement agencies more or less on request—when were calls made from phone A to phone B? what should be the Internet analogy?

The administration was said yesterday to be pressing for quick passage by both houses of the Senate measure: the more careful work of the House Judiciary Committee would be set aside. That's wrong, and an acquiescent step that in the long run Congress likely would regret.

Ms. CANTWELL. This article said it best with the headline: "When Care Beats Haste":

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—

Later it says that it would be wrong for us to take an acquiescent step that in the long run would really hurt our country.

What Senator FEINGOLD is simply trying to say is that we have already painstakingly over many years crafted a careful balance in protecting personal privacy. This language in section 215 changes that. It basically says that the FBI can have access to other things, including business records from U.S. citizens who may have had incidental contact with someone who is defined as a terrorist.

Think about that for a second. If you are an employer and someone in your company has now been accused of these terrorists acts and is under investigation, your business records can also be attained if, as Senator FEINGOLD said, it was deemed part of this investigation, with very minimal judicial review.

Take for another example, you happen to live across the hall from someone who now has become a suspect. Maybe you have been over to their house for dinner several times. Now, all of a sudden, you may be part of that investigation, and your financial records, your medical records, your personal records can now be part of that investigation, again, with very minimal judicial review.

I have heard from many in my State, including my State librarian, consumers, and businesses that are concerned, that this provision is far too broad.

It takes little imagination, as I said, to think of all the tangible items this would give the FBI carte blanche to examine some people's most private and personal papers.

The bottom line is this legislation could circumvent or supersede Federal and State privacy laws that protect student records, library records, and health records not previously admissible under FISA.

What we are talking about in the Feingold amendment is trying to preserve those State and Federal laws that already specify protection. The amendment simply states where Congress or a State legislature has enacted a law which requires an order to obtain records, that Federal or State law stands.

That seems pretty simple. We have worked on these issues. We should not work on them in haste.

This is a very complex time. It is no ordinary time for our country. This process has to remember those fourth amendment rights that we have so diligently fought for in the past. I urge my colleagues to support this amendment.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I am grateful for the remarks of the Senator from Washington. I am afraid we are going to read them in a few years and wish maybe we listened more closely to what we are doing on this particular provision.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Vermont.

Mr. LEAHY. Mr. President, the Senator from Utah wanted to say something for the record.

Mr. HATCH. Mr. President, I thank my colleagues.

I oppose Senator FEINGOLD's amendment to Section 215 of the bill. Section 215 allows federal law enforcement to apply for a court order to obtain records and other evidence in the course of an investigation to protect against international terrorism or clandestine intelligence activities. This provision has many safeguards built in to prevent its misuse.

For instance, the application must be made by the Director of the FBI or his designee, whose rank cannot be lower than an Assistant Special Agent in Charge, and specify that the records concerned are sought for an authorized investigation to protect against international terrorism or clandestine intelligence activities. Additionally, the investigation must be conducted pursuant to approved Attorney General guidelines and may not be conducted on a United States person solely upon the basis of activities protected by the first amendment to the Constitution.

As written, the provision balances the investigatory needs of the FBI with privacy concerns and provides adequate protection, while not allowing a host of state-law provisions to stand in the way of national security needs. Senator FEINGOLD's amendment would condition the issuance of the court order on a myriad of federal and state-law provisions. Such conditioning will have the effect of making investigations to protect against international terrorism more difficult than investigations of certain domestic criminal violations.

Senator FEINGOLD's amendment purports to preserve privacy protections in place for certain records. The amendment's effect, however, will be to place foreign international and intelligence investigations at a disadvantage to criminal investigations. For example, this amendment would make it more difficult for the government to obtain business records in a foreign-intelligence or foreign counter-intelligence investigation through a court order than it is to obtain the same records in a criminal health-care fraud or child pornography investigation through a grand jury subpoena or administrative subpoena. (see 18 U.S.C. 3486).

Federal law enforcement officers investigating the activities of a terrorist organization or foreign intelligence target should not face a greater burden than that imposed on investigators of health-care fraud or child pornography.

I urge my colleagues to vote against this amendment.

Mr. LEAHY. Madam President, the administration originally wanted administrative subpoena authority in foreign intelligence cases for government access to any business record. I was able to reach agreement with the administration to subject this authority to judicial review and to bar investigations based on the basis of activities protected by the First Amendment.

The Feingold amendment would ensure that current laws providing safeguards for certain types of records, such as medical and educational records, be maintained. Again, it is unfortunate that the administration did not accept this amendment.

Mr. President, we are prepared to yield back the remainder of our time if the Senator from Wisconsin is prepared to yield back the remainder of his time.

Mr. FEINGOLD. If the majority leader is going to speak, I would like to respond. If not, I will simply yield back the remainder of my time.

Mr. LEAHY. I yield back the remainder of our time.

Mr. DASCHLE. Mr. President, I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from South Carolina (Mr. THURMOND), and the Senator from New Mexico (Mr. DOMENICI), are necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 89, nays 8, as follows:

[Rollcall Vote No. 301 Leg.]

YEAS—89

Akaka	Campbell	Edwards
Allard	Carnahan	Ensign
Allen	Carper	Enzi
Baucus	Chafee	Feinstein
Bayh	Cleland	Fitzgerald
Bennett	Clinton	Frist
Biden	Cochran	Graham
Bingaman	Collins	Gramm
Bond	Conrad	Grassley
Boxer	Craig	Gregg
Breaux	Crapo	Hagel
Brownback	Daschle	Hatch
Bunning	DeWine	Hollings
Burns	Dorgan	Hutchinson
Byrd	Durbin	Hutchison
Inhofe	McConnell	Sessions
Inouye	Mikulski	Shelby
Jeffords	Miller	Smith (NH)
Johnson	Murkowski	Smith (OR)
Kennedy	Murray	Snowe
Kerry	Nelson (FL)	Specter
Kohl	Nelson (NE)	Stabenow
Kyl	Nickles	Stevens
Landrieu	Reed	Thomas
Leahy	Reid	Thompson
Lieberman	Roberts	Torricelli
Lincoln	Rockefeller	Voinovich
Lott	Santorum	Warner
Lugar	Sarbanes	Wyden
McCain	Schumer	

NAYS—8

Cantwell	Dodd	Levin
Corzine	Feingold	Wellstone
Dayton	Harkin	

NOT VOTING—3

Domenici	Helms	Thurmond

Mr. LEAHY. I move to reconsider the vote.

Mr. DASCHLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NORTHERN BORDER SECURITY

Mr. STEVENS. Mr. President, I thank the members of the Judiciary Committee, especially Chairman LEAHY and Senator HATCH for their hard work on this important legislation. This bill will give the administration an increased ability to fight terrorism on many fronts. One section of the bill that is extremely important to my state addresses Northern Border Security. This bill will triple the number of Border Patrol, Customs Service, and INS inspectors along America's northern borders. It also authorizes $100 million to improve INS and Customs technology and for additional equipment for monitoring the northern borders. Alaska and Alaskans are in a unique position. One section of our northern boarder stretches from Maine through, my good friend's home state of, Vermont all the way to Washington State. A second section is that of my home State. As you know we are the largest State in the Nation with an enormous border with Canada that runs over 1,538 miles. We have one of the busiest international cargo airports in the world, which has lost a number of carriers since the September 11 attacks due to grossly inadequate staffing at our secure, sterile customs facility. We also have several major international ports scattered throughout Alaska including the Port of Anchorage, which handles the most container traffic in Alaska; Dutch Harbor, which is America's busiest commercial fishing port; and Valdez, where millions of barrels of North Slope crude oil are sent by pipeline to the "South 48." The sections of the bill that address the Northern Border Security do not mention Alaska specifically. I intended to offer an amendment to insure that we are part of the definition. But as my good friend the Senator from Vermont pointed out to me, other northern border States are not mentioned specifically either. I understand that it is the intent of this legislation that Alaska and all other states that border Canada

are "Northern Border" States and that INS, Border Patrol, U.S. Customs service and others should look at all of these states when addressing security issues. I would ask the manager of this bill if my understanding is correct?

Mr. LEAHY. Mr. President, the Senator from Alaska is correct. Alaska is definitely part of America's Northern Border and it was the intent of the committee and the Senate that it be part of that definition.

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. It 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 NAFTA. 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 Northern Border. Alaska is certainly one of those States. I was gratified when 22 Senators—Democrats and Republicans—wrote to the President supporting such an increase, and I am pleased that the administration agreed that this critical law enforcement improvement should be included in the bill.

Mr. STEVENS. Mr. President, I thank the Senator from Vermont. With this clear statement of of the legislation I will not offer an amendment to specifically name Alaska as a Northern Border State.

ALIEN TERRORIST REMOVAL COURT

Mr. SMITH of New Hampshire. Mr. President, it had been my intention to offer an amendment which would strengthen provisions in the bill to deal with known terrorist aliens. As Senator LOTT well remembers, we worked in 1996, created the Alien Terrorist Removal Court, to hear cases against aliens who were known terrorist and to allow the Justice Department to deport these aliens without divulging classified information to the terrorist organization.

Mr. LOTT. I know the Senator from New Hampshire has been working a long time on this issue. In fact, when he sponsored this legislation back in 1995, I was a cosponsor of his bill. He has been a leader on this issue, he passed his legislation, and the Court was created.

Mr. SMITH of New Hampshire. That is correct. As the leader knows, there are some changes that are needed to improve the law, which is what my amendment was going to be about.

Mr. LOTT. I understand, and I agree that the law needs to be strengthened.

Mr. SMITH of New Hampshire. Mr. President, I would say to my colleagues, all the tools we are giving to the Justice Department in this bill are irrelevant if we cannot deport these terrorist who are living in our country preparing to terrorize American citizens. Page 162 of the bill says the Attorney General shall place an alien in removal proceedings within 7 days of catching him, or charge him with a criminal act, or else the bill says "the Attorney General shall release the alien." Mr. President, the problem is that most of these terrorist have not committed criminal acts until they are ready to attack. Therefore, in most of these cases, the only option is to deport them.

Mr. LOTT. It is my opinion, that if we can deport known terrorist, we should do it. We cannot let the Justice Department be barred because the evidence was too sensitive to use in Court.

Mr. SMITH of New Hampshire. That is exactly the problem. Under current law, the Justice Department would have to give a declassified summary of all the secret evidence used in the deportation proceedings to the terrorist. Now, why would we compromise our intelligence sources and methods by revealing sensitive intelligence information to a known terrorist? The intelligence community would never allow it, and with good reason. But as a result, the Justice Department has never once used the alien terrorist removal court to deport anyone.

Mr. LOTT. That is my understanding, and it is a serious problem. I am in complete agreement with the Senator.

Mr. SMITH of New Hampshire. Mr. President, I thank the Leader. As I said, it had been my intention to offer an amendment to resolve this problem by eliminating the requirement for the Attorney General to give this sensitive information to the alien terrorist before deporting him. However, upon discussions with the Attorney General, who indicated to me that he supports this provision, and after discussions with the Leader, I have decided in the interest of moving this legislation to withhold my amendment at this time, with the assurance of the Leader and the Administration that we will work to solve this problem in conference.

Mr. LOTT. Let me say to the Senator that he can count me as a cosponsor of this amendment. It is an excellent amendment, it is needed, and I commit to the Senator that I will do my best to see that it is added in conference. I would further say to the Senator that I have also talked about this issue with the Attorney General, and he indicated to me that the Administration supports your amendment and that he will also work to support it in conference when we get to that point. So, I appreciate his withholding at this time so we can get this bill to conference where we can work to get the Smith amendment added to greatly improve this bill.

Mr. SMITH of New Hampshire. I thank the Leader for his strong support, and I am pleased that the administration is also supportive. I know how many long hours the Attorney General is putting in on this issue, and how committed he is to winning this war on terrorism. I look forward to passing this important provision which will be an invaluable tool for the Attorney General and the President in this war.

DETERRING MONEY LAUNDERING

Mr. SCHUMER. Mr. President, I would like to clarify with Chairman SARBANES my understanding of the provision in Title III, the anti-money laundering provisions in the antiterrorism package, entitled "Section 314. Cooperative Efforts to Deter Money Laundering".

As the Chairman is well aware, Section 314(b) is intended to address concerns about regulatory barriers that stand in the way of developing efficient mechanisms and services that financial institutions can use to fulfill their regulatory compliance obligations. The regulations to be issued by the Secretary, and potentially by bank and thrift regulators as well, could further this purpose by reconciling rules that could be interpreted in a way that places conflicting burdens on financial institutions.

Does that comport with the Chairman's understanding of the intent of the provision and how that intent could best be carried out by the regulators?

Mr. SARBANES. I thank the Senator for his question. Yes, that is also my understanding of Section 314.

Mr. CORZINE. Mr. President, I am going to support this legislation, and I want to commend the leadership—Senators DASCHLE and LOTT—and Senators LEAHY and HATCH, for their efforts in developing the bill. Clearly, there is no higher priority than combating terrorism and protecting our national security. At the same time, I do have real concerns about the process by which this legislation has come to the floor, and about the implications of some provisions for fundamental civil liberties.

There are several provisions in this legislation that make a real, positive contribution to the fight against terrorism. Other senators have discussed

some of the highlights in more depth, so let me just focus on a few.

First, this bill includes legislation approved by the Senate Committee on Banking, Housing, and Urban Affairs, on which I sit, that will help authorities crack down on money laundering. This is essential if we are to deprive terrorists of resources. The bill will require additional reporting of suspicious transactions, require identification of the foreign owners of certain U.S. accounts, and impose other requirements on financial institutions to give authorities a greater ability to identify and prosecute money launderers. I also note that the bill includes a provision I authored that calls for a study into the possibility of expanding the legislation to include hedge funds and other investment services that also can be used by terrorists to launder money.

Beyond the money laundering provisions, I also am pleased that this bill provides additional funding for the victims of terrorism. Coming from New Jersey, where thousands of our residents have been victimized by the tragedy at the World Trade Center, this is especially important to me. In my view, we as a nation have a responsibility to ensure that terrorism victims and their families are not left alone and uncompensated. That is why I am pleased that the bill would replenish the antiterrorism emergency reserve, replace the annual cap on the Crime Victim Fund, authorize private contributions to the fund, and strengthen services for victims in other ways. While this is not all that we should be doing for victims and their families, I appreciate the work of the leaders in focusing on their needs.

I also pleased that the bill would triple the number of Border Patrol, Customs Service and immigration inspectors at our northern border. This would significantly enhance security over an area that, until now, has been seriously understaffed. The bill also authorizes $100 million to improve INS and Customs technology and additional equipment for monitoring the U.S.-Canada border.

In addition, I want to highlight language in this bill that would establish two new crimes related to bioterrorism, including provisions to prohibit certain people from possessing a listed biological agent or toxin. There are many other things we need to do to prepare for the threat of a biological or chemical attack, and I have introduced related legislation, S. 1508, that would require states to develop coordinated plans, and that would provide additional resources for hospitals and other health care providers. The threat of bioterrorism is real, and I would hope that our leaders will bring related legislation to the Senate floor as soon as possible.

While I support the provisions in this bill on money laundering, victim services, border enforcement, and bioterrorism, I do have serious concerns about the way this bill was put together, and about other provisions that raise serious questions about the protection of civil liberties.

It is deeply troubling to me that we would be taking up a bill that deals with such sensitive civil liberties matters without comprehensive hearings, and without even consideration by the relevant committee. We are talking about a 243-page bill that was developed behind closed doors by a handful of people operating under enormous time pressure. This is a bill that raises fundamental questions that go to the very essence of our democracy, and our freedoms. It's not something that should be done in haste, with so little opportunity for input from outside experts, the public, and all senators.

Perhaps because the legislation was developed so quickly, and in an environment so dominated by great public anxiety about security, there is a real risk that we will make serious mistakes.

I am especially concerned about the provisions in this bill that require the detention of immigrants who are not terrorists, who are not criminals, but are merely suspected of future wrongdoing. In fact, these provisions go further than that. Lawful permanent residents who are charged with being deportable on terrorism grounds could be held indefinitely even if an immigration judge determines that the terrorism charges are false.

I understand that we need to give the government sufficient authority to protect Americans from those who pose a real threat to public safety. But this provision goes too far. And I hope it can be corrected in conference.

Similarly, there are other provisions of this legislation that seem very loosely drafted, and that could, perhaps unintentionally, lead to infringement on important civil liberties. For example, many have raised serious questions about provisions relating to law enforcement surveillance of Internet and telephone use, and about other provisions that give the government extensive new powers to conduct secret searches. These and other provisions do not seem to have received adequate scrutiny. I am hopeful that they can be examined more closely in conference, and any needed improvements can be made before the legislation is sent to the President.

I also would urge our conferees to accept a provision, like one included in the House version of this legislation, that would set a time limit on the application of certain provisions that pose the greatest threats to civil liberties. In my view, that's especially important since we have rushed this legislation through the Senate so quickly. As I said, I am hopeful that we can identify and correct any mistakes in conference. But we still seem to be operating on a rush basis, and I suspect that some mistakes are inevitable. Given the stakes involved, I think it would be better to make many of these provisions temporary, and then revisit these issues when we have more time to thoroughly consider all their implications.

In the end, while I do have serious concerns about certain aspects of this legislation, I have decided to support the effort to move it to conference. Our nation has just suffered the most horrendous act of terrorism in our history, and we are facing serious threats of other terrorist attacks. A vast, well-organized and well-funded terrorist network has gone to war against our nation. And while we should not overreact, or erode basic freedoms, we do have to defend ourselves.

We must give our law enforcement officials the tools they need to find and destroy these terrorist networks. And this legislation should help. But we need to continue to review and improve its provision as we go to conference. And we will need to continue to closely review the implementation of the legislation after it is enacted.

I yield the floor.

Ms. CANTWELL. Mr. President, I support this bill, but I do so only with some reservations.

We are giving broad new powers to our law enforcement and intelligence communities—without the traditional safeguards of judicial review and congressional oversight.

I believe that many provisions of the bill, particularly those sections dealing with electronic eavesdropping and computer trespass, remain seriously flawed and may infringe on civil liberties.

I am voting for this bill today with the strong hope that it will be improved in a conference with the House. As it currently stands, the Senate bill breaks down the traditional separation of domestic criminal matters governed by the fourth amendment right against unjustified search and seizure—from the gathering of international intelligence information traditionally gathered without the same concern for constitutional rights.

I strongly believe that we should have included in this bill a sunset provision that would give Congress the opportunity to reassess whether these new tools are yielding the intended results in the war on terror, and I am hopeful that the final bill will emerge with this and other improvements.

If this bill is not improved through a conference process or other negotiation, I reserve the right to vote against a conference report.

However, I also believe this bill contains many provisions that will significantly advance our battle against terrorism. I thank the Chairman for his hard work on these provisions and appreciate his efforts particularly to strengthen security on our northern border.

Among the most important provisions in this bill is the authorization to triple staffing across our northern border.

These increases in manpower are desperately needed. The northern border is

patrolled by only 300 border patrol agents in contrast to the 9,000 on the southern border. More critically, at points of entry where suspect persons have repeatedly tried to enter or have entered, we currently lack sufficient staffing to allow Customs and INS inspectors and INS agents to do their job well. We place a tremendous responsibility on the individuals charged with deciding whom to admit and whom to turn away.

One additional new tool this bill provides is the establishment of a visa technology standard to help secure our border. I personally worked to get language included in this bill that requires the State Department and the Department of Justice to develop a shared technology standard—so that we can be certain each individual who seeks entry into our country on a visa—is the person he or she claims to be.

American citizenship comes with deeply valued privileges and rights. One of the most basic of those rights is privacy. To require a fingerprint or a digital photograph of an alien seeking to enter our country is a reasonable and effective way to improve our ability to keep terrorists out of this country while still welcoming a vibrant flow of legal immigrants.

Unfortunately, aspects of this bill that impose unreasonable and unwarranted requirements on legal immigrants, greatly expand electronic eavesdropping, and potentially provide law enforcement easy access to some types of email communications—remain troubling.

I would like to believe that the expansion of the ability of the government to place wiretaps on the lines of American citizens—done in secret with insignificant reporting or opportunity for oversight by the Congress—will not be abused.

I would like to believe that technologies like 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, also have the potential to 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 closely watch how law enforcement uses these tools.

The events of September 11 have changed us as a country forever. We have been attacked on our own soil. Thousands have died, thousands more have been injured. Very simply, we must do all that we can to stop terrorism by finding and disrupting terrorist activities here and abroad. The challenge we face is to do this without compromising the value that make Americans unique and have allowed us to become great: respect for personal autonomy and the rights of the individual; and tolerance of all regardless of race or religion.

While I will vote for this bill, I also promise to engage in vigilant oversight of these new powers, and I urge those in the law enforcement and intelligence communities to use these powers wisely and with great deliberation.

Mr. EDWARDS. Mr. President, I rise in support of S. 1510, the Uniting and Strengthening America Act.

In the aftermath of September 11, we face two difficult and delicate tasks: to strengthen our security in order to prevent future terrorist attacks, and at the same time, to safeguard the individual liberties that make America a beacon of freedom to all the world.

I believe that when the President signs this anti-terrorism legislation into law, we will have achieved those two goals as best we now can.

The act is a far-reaching bill. I will mention just a few key aspects of that bill.

First, the legislation brings our surveillance laws into the 21st century. Here are two of many examples. Under current law, the FBI can use a basic search warrant to access answering machine messages, but the FBI needs a different kind of warrant to get to voice mail. This law says the FBI can use a traditional warrant for both. Another example: Under current law, a Federal court can authorize many electronic surveillance warrants only within the court's limited jurisdiction. If the target of the investigation is in the judge's jurisdiction, but the subject of the warrant is technically an internet service provider located elsewhere, the warrant is no good as to that ISP. This bill allows the court overseeing an investigation to issue valid warrants nationwide.

Second, the act gives law enforcement officers and the foreign intelligence community the ability to share intelligence information with each other in defined contexts. For example, the act says that under specified conditions, the FBI may share wiretap and grand jury information related to foreign- and counter-intelligence. I appreciate concerns that this information-sharing authority could be abused. Like Chairman LEAHY, I would have preferred to see greater judicial oversight of these data exchanges. But I also believe we simply cannot prevail in the battle against terrorism if the right hand of our government has no idea what the left hand is doing.

Third, the act enhances intelligence authorities under the Foreign Intelligence Surveillance Act (FISA). When I met with FBI agents in North Carolina shortly after September 11, they told me their number one priority was to streamline the FISA process. We've done that. We've said, for example, that the renewal periods of certain key FISA orders may be longer than the initial periods. This makes sure the FBI can focus on investigations, not duplicative court applications.

A more controversial change concerns the purpose of FISA surveillance. Under current law, a FISA wiretap order may only enter if the primary purpose of the surveillance is foreign intelligence gathering. The administration initially proposed changing the "primary purpose" requirement to a requirement of "a purpose," any foreign intelligence purpose. At a recent Intelligence Committee hearing, I was one of several Senators to raise constitutional questions about the Administration's initial proposal. The last thing we want is to see FISA investigations lost, and convictions overturned, because the surveillance is not constitutional. S. 1510 says that FISA surveillance requires not just "a purpose," but "a significant purpose," of foreign intelligence gathering. That new language is a substantial improvement that I support. In applying this "significant purpose" requirement, the FISA court will still need to be careful to enter FISA orders only when the requirements of the Constitution as well as the statute are satisfied. As the Department of Justice has stated in its letter regarding the proposed FISA change, the FISA court has "an obligation," whatever the statutory standard, "to reject FISA applications that do not truly qualify" as constitutional. I anticipate continued close congressional oversight and inquiry in this area.

A forth step taken by this legislation is to triple the number of Border Patrol, INS inspectors, and Customs Service agents along our 4,000-mile northern border. Today there are just 300 border patrol agents to guard those 4,000 miles. Orange cones are too often our only defenses against illegal entries. This bill will change that.

Fifth, the bill expedites the hiring of translators by the FBI. It is unthinkable that our law enforcement agents could have critical raw intelligence that they simply cannot understand because they do not know the relevant language. This statute will help to change that state of affairs.

Finally, the bill makes the criminal law tougher on terrorists. We make it a crime to possess a biological agent or toxin in an amount with no reasonable, peaceful purpose, a crime to harbor a terrorist, a crime to provide material support to terrorism. And we say that when you commit a crime of terrorism, you can be prosecuted for that crime for the rest of your life, with no limitations period. Statutes of limitations guarantee what lawyers call "repose." Terrorists deserve no repose.

As Chairman LEAHY and Senator HATCH have both said, this legislation is not perfect, and the House-Senate Conference may yet make improvements. For example, the Conference might clarify that, as to aliens detained as national security threats, the law will secure the due process protections and judicial review required by the Constitution and by the Supreme Court's recent decisions in Zadvydas v. Davis and INS v. St. Cyr. The Conference might also sensibly include a

sunset of the new surveillance authorities, ensuring that Congress will reconsider this bill's provisions, which touch such cherished liberties, in light of further experience and reflection.

The bill is not perfect, but it is a good bill, it is important for the Nation, and I am pleased to support it.

Mr. KYL. Mr. President, I rise in strong support of the antiterrorism bill, S. 1510. The bill would provide our nation's law enforcement with important tools to more effectively investigate and prevent further attacks against the people of the United States.

At the outset, in response to concerns that some have raised, I want to make clear that we are not rushing 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 contained in the Attorney General's proposed legislation 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 have already been voted on and passed by the Senate.

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 the both the CJS bill and the current bill, updates the law to keep pace with technology. The provision on pen register and trap and trace devices 1. Would allow judges to enter pen/trap orders with nationwide scope and 2. Would codify current caselaw 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." [Source: Hearing before the Subcommittee on Technology, Terrorism, and Government Information of the Senate Committee on the Judiciary, 106th Cong, 2nd Sess. (March 28, 2000), at 31.]

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." [Source: Id. at 32.]

Currently, to track a communication that is purposely routed through Internet Service Providers located in different states, law enforcement must obtain multiple court orders. This is because, under current 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." [Source: Id. at 31.]

Section 216 of the Senate bill solves this problem.

I would also like to address another important provision.

Section 802 is intended more clearly to criminalize the possession of biological and toxin agents by those who should not possess them. This section amends the implementing legislation for the 1972 "Convention on the Prohibition of the Development, Production, and Stockpiling of Bactiological, 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.

Finally, let me address briefly the concern voiced by some that we are in danger of "trampling civil liberties." I reiterate that we are not rushing, that we have had thorough, deliberative hearings, and that many of the proposals have already been passed by the Senate. Nothing in the current bill impinges on civil liberties. The bill would 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 laws, 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 kidnapping, 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.

Mr. President, in addition to the all of the other provisions in this antiterrorism 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, Senators HATCH, KENNEDY, LEAHY and I have reached agreement, and which are included in this bill.

Even with the passage of these provisions, however, 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. In conjunction with increasing personnel and infrastructure, the U.S. must deprive terrorists of the ability to present altered international documents, and improve the dissemination of information about suspected

terrorists to all appropriate agencies. Senator FEINSTEIN and I, in a hearing of the Terrorism Subcommittee of the Judiciary Committee this Friday, will continue to assess these needs by hearing from Justice and State Department officials.

So, our actions on immigration reform as it is relates to terrorism must go beyond the scope of this anti-terrorism package. With that said, this 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 antiterrorism 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 and 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 here.

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 Senate anti-terrorism package, Section 219 remains 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.

The Senate's antiterrorism 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. The underlying certification, and all collateral matters, can be reviewed by the U.S. District Court of the District of Columbia, and the Attorney General is required to report to Congress every six months on the use of this detention provision.

Finally, the Senate package, as a result of amendments added by Senator BYRD, 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 authorizes $36.8 million for quick implementation of the INS foreign student tracking system, a program that I have repeatedly urged be implemented.

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 on all fronts to fight against terrorism. That means delivering justice to those who are responsible for the lives lost on September 11, and reorganizing the institutions of government so that the law-abiding can continue to live their lives in freedom.

Mrs. FEINSTEIN. Mr. President, I rise in strong support of the consensus terrorism bill now on the floor of the U.S. Senate.

The people of the United States awoke on September 12 to a whole new world, one in which we can no longer feel safe within our borders. We awoke to a world in which our very way of life is under attack, and we have since resolved to fight back with every tool at our disposal.

This is an unprecedented state of affairs, and it demands unprecedented action. We must seek out and defeat individuals and groups who would build upon the September 11 attacks with more of their own. We simply must give law enforcement officials the tools they need to track, to hunt down, and to capture terrorists, both in this country, and around the world as well. And that is what this bill would do.

Let me just describe some of the key provisions of this legislation, and how those provisions will make an impact, even in the current investigation into the September 11 attacks.

First, this bill makes it easier to collect foreign intelligence information under the Foreign Intelligence Surveillance Act, FISA. Under current law, authorities can proceed with surveillance under FISA only if the primary purpose of the investigation is to collect foreign intelligence.

But in today's world things are not so simple. In many cases, surveillance will have two key goals—the gathering of foreign intelligence, and the gathering of evidence for a criminal prosecution. Determining which purpose is the "primary" purpose of the investigation can be difficult, and will only become more so as we coordinate our intelligence and law enforcement efforts in the war against terror.

Rather than forcing law enforcement to decide which purpose is primary—law enforcement or foreign intelligence gathering, this bill strikes a new balance. It will now require that a "significant" purpose of the investigation must be foreign intelligence gathering to proceed with surveillance under FISA.

The effect of this provision will be to make it easier for law enforcement to obtain a FISA search or surveillance warrant for those cases where the subject of the surveillance is both a potential source of valuable intelligence and the potential target of a criminal prosecution. Many of the individuals involved in supporting the September 11 attacks may well fall into both of these categories.

This language is a negotiated compromise between those who wished the law to stay the same, and those who wished to virtually eliminate the foreign intelligence standard entirely.

The administration originally proposed changing "primary purpose" to "a purpose," but when I questioned Attorney General Ashcroft at our Judiciary Committee hearing, he agreed that "significant purpose" would represent a good compromise.

Second, this legislation will provide multi-point authority, or so-called "roving wiretap authority" in foreign intelligence investigations. This provision is designed to defeat attempts to evade law enforcement by simply switching cell phones or moving locations.

Under current law, law enforcement must get a wiretap order for each individuals phone line. Criminals and terrorists know this, so they often manage to defeat surveillance by simply moving locations or exchanging countless disposable or even stolen cell phones.

This legislation will now allow the surveillance to follow the person, wherever or however that person is communicating. So, no longer will duplicative

wiretap orders be necessary simply to listen to the same, single target of an investigation. This is a powerful change to the law that does not put innocent conversations in danger, but stops the evasion of surveillance now possible under the law.

Third, this legislation allows nationwide service of so-called "pen register" and "trap and trace" orders. Those orders allow law enforcement to track incoming and outgoing phone calls, and now Internet addressing, so that the authorities can make connections between various criminals or terrorists.

The problem with current law is that it has not kept up with technology. Modern communications travel through many jurisdictions before reaching their final destinations, and current law requires court orders from every jurisdiction through which the communication travels.

Under this new legislation, only one court order will be necessary, eliminating the time-consuming and burdensome requirements now placed on law enforcement simply because technology has changed the way communications travel from one place to the other. Law enforcement resources should be spent in the field, not filing unnecessarily burdensome motions in courtroom after courtroom.

I should also mention one important point about this provision. The standard necessary to get a court-ordered pen register or trap and trace is lower than the standard necessary to get a wiretap, so it was very important to make sure that this legislation makes it clear that these orders do not allow law enforcement to eavesdrop on or read the content of communication. Only the origin and destination of the messages will be intercepted.

This legislation also authorizes the seizure of voice-mail messages pursuant to a probable cause warrant, which is an easier standard for law enforcement to meet than the standard required for a wiretap.

Current law treats a voice-mail like an ongoing oral communication, and requires law enforcement to obtain a wiretap order to seize and listen to those saved messages. E-mails, however, receive no similar protection. In my opinion, if law enforcement can access e-mail communications with probable cause, the same should be the case with voice-mails. And so it will be once this legislation passes.

This legislation will also now allow for limited sharing of grand jury and other criminal investigation information with the intelligence community, to assist in the prevention of terrorist acts and the apprehension of the terrorists themselves.

Under current law, law enforcement officials involved in a grand jury investigation cannot share information gathered in the grand jury with the intelligence community, even if that information would prevent a future terrorist act.

Under this legislation, grand jury and other criminal investigative information can be shared if one, the information can is foreign intelligence and counterintelligence information, as defined by statute; two, the information is given to an official with a need to know in the performance of his or her official duties; and three, limitations on public or other unauthorized disclosure would remain in force.

This balance makes sense, I believe strongly that grand jury information should not be leaked to the public or disclosed haphazardly to anyone. But at the same time, it makes perfect sense to allow our own law enforcement officials to talk to each other about ongoing investigations, and to coordinate their efforts to capture terrorists wherever they may be.

This legislation also contains a heavily negotiated provision regarding the detention of aliens suspected of links to terrorism without charging them. Agreement was reached to one, limit to 7 days the length of time an alien may be held before being charged with criminal or immigration violations, two, allow the Attorney General to delegate the certification power only to the INS Commissioner, and three, specify that the merits of the certification is subject to judicial review.

This legislation also contains several key provisions from a bill I introduced last month with the chairman of the Intelligence Committee, Senator GRAHAM. For instance, the bill: Clarifies the role of the CIA director as the coordinator of strategies and priorities for how the government uses its limited surveillance resources; requires that law enforcement officers who discover foreign intelligence information in the course of a criminal investigation share that information with the intelligence community; includes "international terrorist activities" in the definition of "foreign intelligence" to clarify the authorities of the CIA; includes a sense of Congress that the CIA should make efforts to recruit informants in the fight against terrorism, even if some of those informants may, as is likely the case, not be ideal citizens; requires a report from the CIA on the feasibility of establishing a virtual translation center for use by the intelligence community, so that translators around the country can assist in investigations taking place far, far away. For instance, this center would allow a translator living in Los Angeles to assist law enforcement in New York without even leaving California; and finally, agreement was reached to require the Attorney General, in consultation with the CIA Director, to provide training to federal, state and local government officials to identify foreign intelligence information obtained in the course of their duties.

In addition, this bill also: Triples the number of Border Patrol, Customs Service, and INS inspectors at the northern border; authorizes $50 million to improve INS and Customs technology for monitoring the northern border and to add equipment on the border; lifts the statute of limitations on terrorist acts as defined by law where those crimes resulted in, or created a risk of, death or serious bodily injury. These crimes include bio-terrorism, attacks against airports or airplanes, arson or bombings of U.S. facilities, and other terrorist acts; adds this same list of terrorist crimes certain as predicates for RICO and money laundering; creates two new bio-terrorism crimes, the first prohibits certain restricted persons, including non-resident aliens from countries that support terrorism, from possessing a listed biological agent or toxin; and the second prohibits any person from 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.

The Attorney General and the President of the United States have asked this Congress to give them legislation that will assist in the war against terrorism, and I am one who believes very strongly that we should do so, and we should do so quickly.

This bill is a product of intense negotiations, and I believe that a good balance has been struck here. Compromises have been reached on the most controversial provisions, roving wiretap authority; trap and trace of computer routing information; sharing of grand jury information; and mandatory detention of aliens suspected of terrorism.

Although I no longer believe it to be necessary now that these compromises have been reached, I would support a five-year sunset on the provisions I just mentioned as a valuable check on the potential abuse of the new powers granted in the bill.

But a two-year sunset, such as the one contained in the House bill, is simply too short to allow law enforcement to accomplish what it needs to do to rout terrorists from this country.

The legislation before us contains provisions that could actually help in the current investigation into Osama bin Laden and his network in the United States and abroad.

I urge this Senate to pass this legislation and get it to the President for his signature. We are in a sustained war against terror, and we have waited long enough. I

FISA AND PEN REGISTER/TRAP AND TRACE

Ms. CANTWELL. Mr. President, I would like to raise several concerns regarding the provisions of this legislation, the USA Act of 2001, that expand wiretapping authority under the Foreign Intelligence Surveillance Act of 1978, and amend Federal pen register and trap and trace authorities.

Both of these changes purport to improve communication between law enforcement and intelligence operatives. 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. Much of the fear about the legislation is based on 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. 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.

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 address some of those failures, allowing greater sharing of information that could foil terrorists before they carry out their brutal schemes against innocent civilians.

I appreciate Chairman LEAHY's tireless efforts to facilitate our intelligence gathering authorities while preserving our constitutional rights. The negotiations have been intense, but these are difficult and divisive issues. Given the time frame, Chairman LEAHY's charge has not been an easy one, but I appreciate the substantial progress he has made.

I remain concerned that some of the legislative changes fail to balance the increased powers to law enforcement against the need to protect the civil liberties of Americans. With these changes to FISA, it will be much more likely that the FBI will be able to obtain secret FISA wiretaps on American citizens. That information may not only be used for intelligence purposes, but also in a criminal prosecution, without complying with the normal requirements of a title III wiretap and the safeguards it provides to adhere to the fourth amendment. Some have warned that this language leaves room for "fishing expeditions" rather than properly authorized law enforcement activities. I would hope that this is not the case.

Although the language has been improved from the administration's original proposal and now would require that "a significant," rather than simply "a," purpose for the wiretap must be the gathering of foreign intelligence, the possibility remains that the primary purpose of the wiretap would be a criminal investigation, without the safeguards of the title III wiretap law and the protections under the fourth amendment that those fulfill.

I would like to ask the Chairman of the Judiciary Committee whether he interprets this language in this same way.

Mr. LEAHY. Yes, the Senator from Washington is correct. While improved, the USA Act would make it easier for the FBI to use a FISA wiretap to obtain information where the Government's most important motivation for the wiretap is for use in a criminal prosecution. This is a disturbing and dangerous change in the law. The Justice Department concedes that "the few courts that have addressed the issue have followed a primary purpose test", October 1, 2001 Letter from Daniel J. Bryant, Assistant Attorney General, p. 13.

I appreciate the administration's agreement to move off its original position of changing the law to only require the FISA surveillance to "a" purpose of collecting foreign intelligence information. Indeed, the Justice Department's own constitutional analysis provided to the Committee at the request of our Members does not even attempt to justify the original proposal, but instead presents argument for why a change to "a significant" purpose would be constitutional.

I remain disappointed with the administration's insistence on forcing any change on this important statutory requirement. FISA was enacted for the express purpose of clarifying that different legal standards apply to those gathering foreign intelligence than to those seeking criminal evidence. This new provision will blur that distinction, and it is indeed very problematic in my mind.

Federal courts have upheld FISA on the basis that what is reasonable under the fourth amendment may vary when national security is at risk. Thus, a FISA wiretap does not have to be based on probable cause to believe a crime has been or is about to be committed, and no notice is given unless the person is prosecuted. Further, while judges review warrants on the merits when targets are U.S. persons, the primary purpose for the wiretap must be the protection of our national security. Upon satisfaction of that critical condition, the statute authorized the use of evidence obtained under a FISA wiretap for criminal prosecution.

Ms. CANTWELL. Mr. President, although much effort has gone into narrowing this provision to fit within the bounds of the Constitution, it would seem to me that this legislation may not stand up to this test, and thus may fail judicial scrutiny. Regardless, we cannot await court review. I believe Congress must keep watch over the use of this provision. May I ask the Chairman, do you agree that, under these circumstances, it is incumbent upon the committee, which has jurisdiction over the Department of Justice, to maintain vigilant oversight of the Department in its use of FISA authorities after enactment of this legislation?

Mr. LEAHY. I agree with you completely, and you can rest assured that the Judiciary Committee under my chairmanship will conduct meaningful oversight, as we already have begun to do over the summer.

Although FISA requires oversight reporting to the Intelligence Committees, the law makes clear that other Committees may also have oversight jurisdiction. Section 108 of FISA, 50 U.S.C. 1808, states, "Nothing in this title shall be deemed to limit the authority and responsibility of the appropriate committees of each House of Congress to obtain such information as they may need to carry out their respective functions and duties." Section 306 of FISA, 50 U.S.C. 1826, provides for semiannual reports from the Attorney General to the Intelligence and Judiciary Committees on the number of applications for physical search orders made, granted, modified, or denied, and the number of physical searches which involved the property of United States persons. The Judiciary Committee's responsibility will be greater under the amendment to FISA, because of the greater authority to use FISA for law enforcement purposes.

Ms. CANTWELL. Mr. President, similarly, I am concerned that revisions to the laws regarding pen registers and trap and trace devices may have fourth amendment implications. Although modified since we received the original language from the Administration, the new language could encourage greater use of technologies such as the FBI's "Carnivore" to access information that is protected by the fourth amendment.

The failure to properly define the term "address" in the e-mail context to exclude information protected by the Fourth Amendment will haunt us for a long time. And I regret this. Although it certainly can be said that new technologies are emerging and the definition may need be flexible, the term "address" presently is undefined and new in the context of our Federal criminal statutes. Because of this ambiguity, we may see law enforcement authorities take inconsistent approaches to filtering information pursuant to this new law. There is risk that some will obtain information, such as "subject line" information or URL codes, that may otherwise be protected by the fourth amendment. There is certain to be judicial scrutiny of this provision.

Mr. LEAHY. I agree with Senator CANTWELL and thank her for bringing these concerns to the attention of this body. I share these concerns.

Ms. CANTWELL. I would like to suggest to the chairman, and I would be happy to work closely with the Chairman on this, that the General Accounting Office provide to the Senate Judiciary Committee every six months a report on the use of the FISA wiretap authorities, and the expanded pen register and trap and trace authorities, by the Federal Bureau of Investigation or other agencies within the Department of Justice. I would certainly not suggest compromising the security of our

nation with such a report, so I would be content with closed-session hearings on the findings of such reports. But only with such oversight can we reasonably assure our constituents that the use of these new authorities is not impinging on our fourth amendment rights.

Mr. LEAHY. I agree with Senator CANTWELL and I appreciate her efforts to suggest restraint at the Department of Justice to avoid misusing the new authorities we are contemplating using to address terrorism. I share her view that the GAO should undertake this important assignment and will work with her and other Senators to see it accomplished. We all need to make certain that these new authorities are not abused.

Ms. CANTWELL. I thank the chairman for his diligence in working to preserve our fundamental rights.

Mr. ENZI. Mr. President, I am proud to be a co-sponsor of S. 1510, the "Uniting and Strengthening America Act" or "USA Act." This bill reflects a bipartisan effort to aid law enforcement, immigration, and the intelligence community in investigating, detaining, and apprehending suspected terrorists. This legislation follows lengthy committee inquiry, debate, and revision of legislation Attorney General Ashcroft proposed a few weeks ago and which sparked national debate over whether civil rights would be violated.

During the past few weeks, Senate leaders have been working tirelessly with Attorney General Ashcroft in order to create a bill that strengthens our existing laws with respect to apprehending terrorists, but still protects the civil rights of our citizens. This is an important mission for Congress. Everyone in America understands the need for enforcement, immigration and the intelligence community to have the tools necessary to find terrorists, cut-off their financial support, and bring them to Justice.

While I am committed to routing out terrorists here and abroad, I am equally committed to making sure the rights of innocent U.S. citizens are not violated. This includes the privacy and property rights our constitution affords and that make this country so great. I believe this bipartisan bill does both. This legislation strikes a balance between protecting our civil rights and assisting Attorney General Ashcroft and others to do their jobs. While the Senate and House may later debate some of the provisions in this legislation, be assured that every member of Congress is united in this mission. We are totally committed to passing anti-terrorism legislation and apprehending the bin Ladens of this world.

Mr. WELLSTONE. Mr. 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 colleague from Vermont and others have put into this legislation. They have done their best to balance the risk of further terrorist attacks with possible risks to civil liberties. The bill updates and improves a number of existing laws, it creates important new security statutes, and it authorizes new money for programs that will bring much needed relief to victims of terrorist attacks. I have reservations about certain provisions of the bill as they might affect civil liberties. I wish that it were more tightly targeted to address only actions directly related to terrorism or suspected terrorism. And I hope that by the time it passes as a conference report the bill will contain a sunset provision. But I support the bill today as a step toward conference, and as an important and needed strengthening of our security from horrific attacks such as that of September 11.

The bill expands the Regional Information Sharing Systems Program to promote information sharing among Federal, State and local law enforcement agencies in their anti-terrorism efforts. 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 firefighters, 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 prosecutors betters tools to go after those involved in money-laundering schemes that are linked to terrorism, and it adds certain terrorism-related crimes as predicates for RICO and money-laundering. It creates a new criminal statute targeting acts of terrorism on mass transportation systems, and it strengthens our Federal laws relating to the threat of biological weapons. The bill will enhance 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 or quantity that is not reasonably justified by a peaceful purpose.

The bill also broadens the authority of the President to impose sanctions on the Taliban regime. Regarding criminal penalties for those convicted of terrorist acts, it provides a fair definition of what constitutes "terrorism" and ensures that penalties more closely reflect the offenses committed by terrorists. Again, I'd like to thank my colleague from Vermont and others who worked on these penalty provisions. The administration's initial proposal was too broad in this area, and the current bill provides a fair alternative.

I strongly support these needed provisions. Still, I do have concerns about the possible effect on civil liberties of the bill's measures to enhance electronic surveillance and information sharing of criminal justice information, while at the same time reducing judicial review of those actions. I also hope that the bill's provisions to expand the Government's ability to conduct secret searches, as well as searches under the Foreign Intelligence Surveillance Act, will not be abused.

I believe we will need to monitor the use of new authorities provided to law enforcement agents to conduct surveillance of internet communications. The same is true of the bill's changes to laws allowing the sharing of confidential criminal justice information with various Federal agencies. I would prefer the requirement of judicial review before disclosure, which is contained in the House version of this bill. Likewise, I believe the House of Representatives' decision not to include this bill's expansion of the Government's ability to conduct secret, or so-called "Sneak-n-Peek," searches, was correct. I hope the safeguards against abuse we have added in our bill—such as the prohibition against the Government seizing any tangible property or stored electronic information unless it makes a showing of reasonable necessity, as well as the requirement that notice be given within a reasonable time of the

execution of a sneak-n-peak warrant—will prove sufficient.

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.

Mr. President, 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 on civil liberties in the coming months and years.

I believe a sunset provision that ensures that review is essential. The bill before us today is good, but there are provisions that are too broad. There are parts that should be more narrowly focused on combating terrorism. I hope these are the concerns that will be addressed in conference. Mr. President, our challenge is to balance our security with our liberties. While it is not perfect, I believe we are doing that in this bill.

Mr. KOHL. Mr. President, I rise today to support S. 1510, the anti-terrorism bill.

To more effectively fight terrorism and those who perpetrate it, we need to improve law enforcement's intelligence gathering capability and enhance their ability to investigate and prosecute suspected terrorists. This measure does both. But let's also be realistic about the act. It will not solve all of law enforcement's problems in combating terrorism nor will it severely compromise our civil liberties. The truth lies somewhere in between.

The strongest proponents of the legislation argue that the bill primarily consists of long overdue updates of current laws, updates necessary because technology advances have allowed criminals and terrorists to stay a step, or two, ahead of law enforcement. Updates are necessary because the inability of Federal authorities to share information on suspected terrorists hampers criminal investigations. Updates are necessary because the penalties and limitations periods governing many terrorist crimes have been woefully inadequate. All of this is true. And for these reasons, I support the bill.

But, we shouldn't be lulled into thinking that this measure will solve our problems. Indeed, I asked the Attorney General whether the new powers granted in this bill could have prevented the events of September 11. He answered me honestly, saying that he could not make that guarantee. Yet, he added that these new tools would make it less likely that terrorism could strike in the same way again.

Tougher laws and penalties are an important part of our strategy to combat terrorism. That plan must also include more and better agents dedicated to gathering intelligence, an aggressive approach to preventing attacks, and patience from all Americans. Patience is essential because we will need to understand that we might have to temper our freedoms slightly in an effort to guarantee them.

Critics of this legislation caution us to be wary of compromising our liberties in an effort to make our Nation safer. They comment that sacrificing freedom gives the terrorists a victory. Those warnings do have merit.

Some of this bill's provisions do risk our civil liberties and ask Americans to sacrifice some privacy. This bill grants our prosecutors a great deal of discretion in enforcing the law and asks Americans to have faith that this power will not be abused. Most of us would rather not have our civil liberties depend on someone else's discretion.

That's why I believe many of this bill's provisions should lapse in two years and then be reconsidered by Congress. The House version of this bill reconciles the need for tough law enforcement with the concern for our civil liberties by sunsetting some of the most objectionable portions of the bill in two years. That is a good idea. Two years from now, we can take stock of where we are, how this bill has affected us, and whether the trust we show in law enforcement is warranted. I hope that the final version of this bill will adopt such a sensible approach.

I have never doubted that our country's law enforcement is the best in the world. They are dedicated, creative, committed, and decent. From local beat officers to the Director of the FBI, every one of them has a vital role to play in combating terrorism. We believe this bill will help them prevent terrorism when possible. It will help them catch wrongdoers. It will cut wrongdoers off from their support networks. It will guarantee stiff punishment for their criminal acts. It will deter others from following in the terrorists' footsteps. It is our responsibility to give law enforcement the tools they need in an increasingly complex world. It is their responsibility to use them wisely.

Ms. SNOWE. Mr. President, I rise today in support of the antiterrorism legislation we have before us.

First, let me say I am pleased to have also worked in conjunction with Senator BOND and Senator CONRAD in supporting their legislation entitled "The Visa Integrity and Security Act." This bill addresses many of the concerns I have, 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 United States on student visas, including those attending flight schools. These are critical issues, and I commend both Senators for their efforts.

Today, our men and women in uniform are on the frontlines in the war against terrorism. We salute their willingness to put themselves in harm's way in defense of freedom, and we pray for their safety and well-being. Here at home, we are working to secure our nation, and that is why I am pleased that we will pass this legislation in the Senate that will take strong measures to help prevent further terrorist attacks on American soil.

With this legislation, we will 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.

In our war against terrorism, Americans stand as one behind our President. It is equally critical that, in the all-out effort to protect our homeland, Federal agencies be united in securing American soil.

In that light, President Bush made exactly the right decision when he created the Office of Homeland Security, a national imperative in the wake of the horrific tragedies of September 11, and I commend him for appointing my former colleague, Pennsylvania Governor Tom Ridge, as its Director.

With a seat at the Cabinet table, Governor Ridge will literally be at the President's side, giving him the standing that will be required to remove jurisdictional hurdles among the 40-plus agencies he will be responsible for coordinating. Now, we will assist in that coordination by allowing INS and the State Department access to the information they need to make informed decisions about who we will grant entrance into this country.

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. In fact, I recently wrote an op-ed piece concerning my findings during that time and I would like to submit the entire text of that piece for the RECORD.

In conducting oversight of Embassy security as well as visa and consular operations, I became extensively involved with the issue of terrorism, co-drafting antiterrorism legislation with former Representative Dan Mica in the wake of 1983 and 1984 terrorist attacks against the U.S. Embassy and Marine barracks in Lebanon—traveling to Belgrade, Warsaw, and East Berlin to press government officials into helping

stem the flow of money to the terrorist Abu Nidal and his organization—and investigating entry into the United States by radical Egyptian cleric Sheikh Omar Abdel Rahman, mastermind of the 1993 World Trade Center bombing.

As far back as our hearings on the 1985 Inman Report, commissioned by then-Secretary of State George Shultz in response to the attacks in Lebanon, it was abundantly clear that improved coordination and consolidation of information from agencies such as the FBI, CIA, DEA, Customs, INS and the State Department would be an essential step toward removing a vulnerability in our national security. That point was tragically underscored by our discovery that, astoundingly, in the period since 1987 when Sheikh Rahman was placed on the State Department lookout list, the Sheikh entered and exited the United States five times totally unimpeded.

But it got even worse. Even after the State Department formally issued a certification of visa revocation, he was granted permanent residence status by the INS. When he was finally caught on July 31, 1991, reentering the United States, he was immediately released back into U.S. society to allow him to pursue a multi-year appeal process.

As unbelievable as that may sound, just as unfathomable 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 3 more years to enact it as part of the Anti-Terrorism and Effective Death Penalty Act of 1996.

However, provisions from my bill were enacted in 1994 to respond to the trail of errors we uncovered requiring modernization in the State Department's antiquated microfiche "lookout" system to keep dangerous aliens from entering the United States.

This system required manual searches, was difficult to use, and was subject to error. The language I crafted required the State Department to replace the old systems with one of two forms of state-of-the-art computerized systems. Visa fees were even increased for non-immigrants to pay for the upgrades.

Recognizing the need to mate these new technologies with the need for the most comprehensive, current and reliable information, we also attempted to address the issue of access. This was all the more pressing because, in 1990, the Justice Department had ruled that because the State Department was not a "law enforcement agency," it no longer had free access to 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, was used by the State Department to deny visas. Tellingly, after it lost access to the NCIC, 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.

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. To address this, 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 only provided the State Department with free access to these FBI resources for purposes of processing immigrant visas—dropping my requirement for non-immigrant visas eventually used by all 19 suspected hijackers.

Also of note, we discovered later in trying to understand some of what's gone wrong that even that limited law was sunsetted in 1997 due to a provision added by the House-Senate conference on the Foreign Relations Authorization Act for FY 1994–1995—a conference of which I was not a member. Subsequently, that law was extended to 1998 in the Commerce-Justice-State Appropriations bill for fiscal year 1998, and then was allowed to expire. This happened 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. Thus, today, information sharing remains optional and ad hoc.

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 United States. 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 does mandate access to the NCIC by INS and the State Department.

Clearly, the catastrophic events of September 11 have catapulted us into a different era, and everything is forever changed. We must move heaven and earth to remove the impediments that keep us from maximizing our defense against terrorism. 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.

That is why we need a singular, Cabinet-level authority that can help change the prevailing system and culture, and why we need legislation to help them do it. Ironically, the most compelling reason for an Office of Homeland Security is also its greatest challenge—the need to focus on the "three C's" of coordination, communication and cooperation so that all our resources are brought to bear in securing our Nation.

Winston Churchill, in a 1941 radio broadcast, sent a message to President Roosevelt saying, "Give us the tools and we will finish the job." I have no doubt that, given the tools, the men and women of our Embassies throughout the world will get the job done and help us build a more secure American homeland.

Finally, once a visa is issued at the point of origin, we should be ensuring that it's 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 United States 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 officials 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 United States. 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 INS has already announced it was beginning to implement the new biometric Mexican border crossing cards as required by 1996 Illegal Immigrations Reform and Immigrant Responsibility Act. These cards have the individual's fingerprint encoded on them and are matched to the fingerprint of the person possessing the card at a U.S. port-of-entry.

This surely does not sound all that much different than the legislation I have proposed. I am pleased the bill before us at least starts us down the road toward implementing biometric technologies by requiring a review of the feasibility of instituting such technologies, and I hope this can be achieved as soon as possible.

Despite areas where I might have wished to strengthen this bill even further, this legislation is vital to our national security, and I will be proud to support it. The war on terrorism is a war on myriad 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. I thank the Chair.

Mr. KENNEDY. Mr. President, a month ago today, America was attacked by vicious terrorists bent on doing all they can to undermine our Nation, our freedoms, and our way of life. But they have failed. Our country has never been more united behind the ideals that make us strong, or more committed to protecting our security.

In recent weeks, we have sought international cooperation and received it. We have asked our men and women in uniform to protect and defend our Nation, and they are doing it superbly. We are equally committed to preserving our freedoms and our democracy.

The goal of this antiterrorism legislation is to achieve greater coordination between the law enforcement and intelligence communities, while protecting the civil liberties of American citizens. We must give the Secretary of State and the Attorney General the tools to stop terrorists from entering our country, while guaranteeing America's proud tradition of welcoming immigrants from around the world.

The terrorist attacks of September 11 make it an urgent priority to act as soon as possible. The INS and the State Department must have the technology and intelligence information they need to make quick and accurate decisions on whether to admit anyone to the United States.

We must also take urgent steps to improve security at our borders with Canada and Mexico, to keep terrorists from entering the country illegally.

These improvements in the immigration laws can make a huge and immediate difference. Immigration security is an indispensable part of our national security.

As we protect our country, we must also protect the founding principles that have made our nation great. We must respond to the current crisis in ways that protect the basic rights and liberties of our citizens and others residing legally in the United States.

Currently, the INS has broad authority to act against any foreign national who supports terrorism. With respect to visitors, foreign students, and other non-immigrants, as well as immigrants already in this country, the Federal Government has a broad range of enforcement tools. The INS may detain certain non-citizens if they pose a threat to national security or are a flight risk, and they may do so on the basis of secret evidence. The INS may also deport any alien who has engaged in terrorist activity, or supported terrorist activity in any way. If the INS has the resources to use its existing authority fully and fairly, we will be far closer to ensuring our national security.

Nonetheless, loopholes may exist in our current laws, and we should close them. In recent weeks, many of us in Congress have worked closely with the administration to strengthen the law without creating serious civil liberties concerns. Although we have made progress, more remains to be done. I continue to be concerned that the Attorney General has the authority to detain even permanent residents without adequate cause, and with very few due process protections.

We must be cautious that new measures are not enacted in haste, undermining current law in critical and constitutionally troubling respects. We must avoid enacting legislation with vague and overly broad definitions or legislation that punishes individuals exercising constitutionally protected rights.

Consistent with these basic principles, it is essential for Congress to strengthen the criminal code in response to the September 11 attacks. We must increase penalties for terrorists and those who support terrorist activity. We must punish those who possess biological weapons and commit acts of violence against mass transportation systems. We must also ensure that victim assistance and victim compensation programs are able to help all the victims of the September 11 attacks. In fact, the current bill makes several important reforms to the Victim of Crimes Act to achieve that goal.

I am concerned, however, that by authorizing foreign-intelligence searches where foreign-intelligence gathering is only "a significant purpose"—not the sole or primary purpose—of the search, the bill may well make the Foreign Intelligence Surveillance Act unconstitutional under the fourth amendment.

We must also ensure that, in acting to expand the powers of law enforcement to obtain student educational records for the investigation and prosecution of terrorism, we adequately safeguard the interests of innocent students. We should not permit schools and colleges to transfer student records to law enforcement agencies indiscriminately. We have worked closely with the administration to develop measures that strike a balance between the legitimate interests of law enforcement and the privacy of students.

In the wake of the September 11 attacks, we have also seen a disturbing increase in hate-motivated violence directed at Arab Americans and Muslim Americans. The Department of Justice is currently investigating over 90 such incidents, including several murders.

We need to do more to combat the acts of hate that cause many Arab and Muslim Americans to live in fear. Under current law, the Department of Justice cannot prosecute such cases as hate crimes unless it can prove that the victim was engaged in one of six "federally protected activities"—such as voting or attending a public university—when the crime occurred. This requirement is an unwise and unnecessary constraint on effective law enforcement and may hamper the Department's ability to prosecute some of the cases it is now investigating.

The bipartisan hate crimes bill passed by the Senate last year and approved again by the Judiciary Committee in July would remove the "federally protected activity" requirement from the law—making it easier for the Justice Department to prosecute hate crimes—while still ensuring that the Federal Government is only involved when necessary and appropriate.

Congress and the President must send a strong and unequivocal message to the American people that hate-motivated violence in any form will not be tolerated in our nation.

There are provisions in the Uniting and Strengthening America Act that do not strike the correct balance between law enforcement authority and civil liberties protection. However, I am confident that working with the House of Representatives and the administration, we can enact a final bill that meets these important concerns.

We can send the President a tough, comprehensive, and balanced antiterrorism bill. The important work we do in the coming days will strengthen

America, and make America proud of its ideals as well.

Mr. KERRY. Mr. President, I am very pleased to have the opportunity to speak for a few minutes about the Uniting and Strengthening America, USA, Act that is before the Senate today. This legislation reflects the hard work of the Senate Banking Committee and the Senate Judiciary Committee, and I want to thank them for their commitment to ensuring that Congress address this legislation as quickly as possible and for paying great attention to the civil rights and liberties of the American people.

Right now our Nation is strongly united. We are bound together by, among other things, a desire to see justice brought to those who planned the terrorist attacks and those who aided and abetted the terrorists. And Americans are united by our desire to prevent future terrorist attacks. At this time, more so than at any time in the past 40 years, the American people are standing firmly behind the Federal Government and they trust government to do the right thing. The American people support the idea that we must provide the FBI and the Department of Justice will the tools necessary to punish the perpetrators of the terrorist attacks and to prevent future attacks.

But as much as the American people seek a just resolution to the acts of terror, they are adamant about protecting their rights and liberties. We have heard it time and again since September 11: our Nation must be secure, but must not become so at the expense of our freedoms, our rights, and our liberties. We must not let the American people down.

I want to thank Senator LEAHY for his leadership on this legislation and his concern with important Constitutional principles, such as due process and unreasonable search and seizure. At Senator LEAHY's urging, the administration's anti-terrorism proposal was carefully and closely analyzed and Senator LEAHY did not yield to the political pressures that threatened to push this legislation through the Congress without its careful consideration. I believe that the bill before the Senate is vastly improved from the proposal that the administration sent up, and I appreciate that important changes were made.

Though I am grateful that important changes have been made to the Senate bill, I am still troubled by certain provisions in the legislation which fail to strike the proper balance between the need for security and the need for civil liberties. Moving an anti-terrorism bill through the Congress in a timely fashion is critically important, particularly in light of the ongoing air strikes in Afghanistan. We all know that a real threat exists for future terrorist attacks in this country and passing legislation that helps the Federal Government prevent those attacks is crucial. I support the process, I support moving this legislation forward, and I will vote for it. But I also believe that the bill that passed the House better balances our civil liberties and the Federal Government's need for greater surveillance powers, and I am hopeful that the bill that emerges from the conference committee retains some of these provisions. I am disturbed by comments made yesterday by the administration in which swift consideration by both houses of Congress of the Senate bill was urged. This legislation deserves the full measure of our attention and should not be hastily dispensed with when the threat to our most cherished civil liberties is so great.

The wide-ranging legislation before us would enhance domestic surveillance powers, stiffen penalties for terrorism, increase the penalties for money-laundering, and make it easier for law enforcement and intelligence agencies to share information. There was broad agreement on some elements of the administration's anti-terrorism package, such as the need to update our anti-terrorism laws to take account of new technologies—such as cell phones—and to ensure that counter-terrorism investigators wield the same powers that apply to drug trafficking and organized crime. But agreement was more difficult to reach on other issues, like detaining foreign nationals, and I am pleased that we are in a position to move forward on the legislation.

I am also pleased that this package includes a bill, which I sponsored, that will provide the tools the U.S. needs to crack down on international money laundering havens and protect the integrity of the U.S. financial system from the influx of tainted money from abroad. This legislation was part of a package of anti-money laundering provisions that unanimously passed the Senate Banking Committee last week.

Today, the global volume of laundered money is estimated to be 2 to 5 percent of global Gross Domestic Product, between $600 billion and $1.5 trillion. The effects of money laundering extend far beyond the parameters of law enforcement, creating international political issues and generating domestic political crises.

It is becoming more and more apparent that Osama bin Laden's terrorist network, known as al Qaida, provided assistance to the hijackers who attacked the World Trade Center and the Pentagon with funding that was transported from the Middle East to the United States through the global financial system. Al-Qaida has, for years, developed a worldwide terrorist network by taking advantage of an open system of international financial transactions.

The United States has declared a war on terrorism. This new war is going to be unlike anything that we have ever engaged in previously. If we are to lead the world in the fight against terror, we must insure that our own laws are worthy of the difficult task ahead.

The International Counter-Money Laundering and Foreign Anti-corruption Act of 2001, which I sponsored and which has been included in this legislation, will stop the flow of assets through the international financial system that have been used by bin Laden, the al Qaeda terrorist network and other terrorist groups.

The United States has the largest and most accessible economic marketplace in the world. Foreign financial institutions and jurisdictions must have unfettered access to markets to effectively work within the international economic system. The goal of this legislation is to give the Treasury Secretary, in conjunction with our allies in the European Union and the Financial Action Task Force, the authority to leverage the power of our markets to force countries or financial institutions with lax money laundering laws or standards to reform them. If they refuse, the Secretary will have the authority to deny foreign financial institutions or jurisdictions access to the United States marketplace. This will help stop international criminals from laundering the proceeds of their crimes into the United States financial system or using the proceeds to commit terrorist acts.

Specifically, the bill will give the Secretary of the Treasury—acting in consultation with other senior government officials—the authority to designate a specific foreign jurisdiction, foreign financial institution, or class of international transactions as being of "primary money laundering concern." Then, on a case-by-case basis, the Secretary will have the option to use a series of new tools to combat the specific type of foreign money- laundering threat we face. In some cases, the Secretary will have the option to require banks to pierce the veil of secrecy behind which foreign criminals hide. In other cases, the Secretary will have the option to require the identification of those using a foreign bank's correspondent or payable-through accounts. If these transparency provisions were deemed to be inadequate to address the specific problem identified, the Secretary will have the option to restrict or prohibit U.S. banks from continuing correspondent or payable-through banking relationships with money laundering havens and rogue foreign banks. Through these steps, the Secretary will help prevent laundered money from slipping undetected into the U.S. financial system and, as a result, increase the pressure on foreign money laundering havens to bring their laws and practices into line with international anti-money laundering standards.

The bill provides for actions that will be graduated, discretionary, and targeted, in order to focus actions on international transactions involving criminal proceeds, while allowing legitimate international commerce to continue to flow unimpeded.

It provides a clear warning to those who have assisted or unwittingly assisted those involved in the al Qaeda network or other terrorist organizations in laundering money. The United States will take whatever actions are necessary, including denying foreign banks and jurisdictions access to the United States economy, in order to stop terrorists and international criminal networks from continuing to launder money through the international financial system.

Passage of this legislation will make it much more difficult for new terrorist organizations to develop. During the 1980s, as Chairman of the Senate Permanent Subcommittee on Investigations, I began an investigation of the Bank of Credit and Commerce International (BCCI), and uncovered a complex money laundering scheme involving billions of dollars. Fortunately, BCCI was forced to close and we were able to bring many of those involved in to justice. However, as we have learned since the closing of BCCI, Osama bin Laden had a number of accounts at BCCI and we had dealt him a very serious economic blow. So as we consider this bill as a response to recent attacks, we must not lose sight of the potential this legislation will have to stop the development of terrorist organizations in the future.

With the support of the United States and the European Union, the Organization of Economic Cooperation and Development has begun a crackdown on tax havens by targeting 36 jurisdictions which it said participate in unfair tax competition and undermine other nations' tax bases. The OECD approach does not punish countries just for having low tax rates, instead, it looks for tax systems that have a lack of transparency, a lack of effective exchange of information and those countries that have different tax rules for foreign customers than for its own citizens. Countries with these types of tax systems assist terrorists and international criminal organizations looking to hide money that was derived from the sale of drugs, weapons and other criminal enterprises that have already been laundered in the international financial system.

Mr. President, earlier this evening my colleague Senator FEINGOLD offered an amendment to the section of the USA Act that deals with the interception of computer trespass communications. This amendment, at its core, was intended to prevent law enforcement from abusing their authority to monitor computer activity. The Senator from Wisconsin's amendment would have limited the amount of time that law enforcement could monitor suspicious activity without a court order to 96 hours, after which time investigators would have to obtain a warrant for continued surveillance. I support the intent of this amendment, and regret that I felt compelled vote to table the amendment. I voted to table the amendment for two reasons: First, I was concerned that the amendment was overly restrictive because it prevented law enforcement from investigations unrelated to the computer trespass. My concern is that law enforcement authorities would, for example, be able to monitor activity which permitted a computer hacker to establish a "dead drop" zone for terrorists to post messages, but would not be able to monitor the content of those messages.

I also voted to table Senator FEINGOLD's amendment because I strongly believe that we must move forward with this anti-terrorism legislation. Just today the FBI issued a statement warning of terrorist attacks and put law enforcement on the highest alert. I believe these serious threats to our security justify our this legislation swiftly. But I sincerely hope that an acceptable compromise can be reached—on this and on other issues—in the final legislation.

This legislation is a crucial step toward limiting the scourge of money laundering and to stop the development of international criminal organizations. It is my hope that the Congress will be able to develop anti-terrorism legislation that will provide needed protections of our citizens without eliminating any of our cherished individual liberties.

Ms. SNOWE. Mr. President, in the war against terrorism, Americans stand as one behind our President. Now, in the all-out effort to protect our homeland, Federal agencies must be united in securing American soil.

In that light, President Bush made exactly the right decision when he created the Office of Homeland Security—a national imperative in the wake of the horrific tragedies of September 11—and I commend him for appointing my former colleague, Pennsylvania Governor Tom Ridge, as its director. With a seat at the Cabinet table, Governor Ridge will literally be at the President's side, giving him the standing that will be required to remove jurisdictional hurdles among the forty-plus agencies he will be responsible for coordinating.

I saw firsthand the consequences of serious inadequacies in coordination and communication during my twelve years as ranking member of the House Foreign Affairs International Operations Subcommittee and Chair of the subcommittee's Senate counterpart. In conducting oversight of embassy security as well as visa and consular operations, I became extensively involved with the issue of terrorism, co-drafting anti-terrorism legislation with former Representative Dan Mica, Florida, in the wake of 1983 and 1984 terrorist attacks against the U.S. embassy and Marine barracks in Lebanon; traveling to Belgrade, Warsaw, and East Berlin to press government officials into helping stem the flow of money to the terrorist Abu Nidal and his organization; and investigating entry into the United States by radical Egyptian cleric Sheikh Omar Abdel Rahman, mastermind of the World Trade Center bombing in 1993.

As far back as our hearings on the 1985 Inman Report, commissioned in response to the attacks in Lebanon, it was abundantly clear that improved coordination and consolidation of information from agencies such as the FBI, CIA, DEA, Customs, INS and the State Department would be an essential step toward removing a vulnerability in our national security. That point was tragically underscored by our discovery that, astoundingly, in the period since 1987 when Sheikh Rahman was placed on the State Department lookout list, the Sheikh entered and exited the U.S. five times totally unimpeded. Even after the State Department formally issued a certification of visa revocation, he was granted permanent residence status by the INS. When he was finally caught on July 31, 1991, reentering the United States, 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 3 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 1994 requiring modernization in the State Department's antiquated microfiche "lookout" system to keep dangerous aliens from entering the United States. This system required manual searches, was difficult to use, and was subject to error. The language I crafted required State to replace the old systems with one of two forms of state-of-the-art computerized systems. Visa fees were even increased for non-immigrants to pay for the upgrades.

Recognizing the need to mate these new technologies with the need for the most comprehensive, current and reliable information, we also attempted to address the issue of access. This was all the more pressing because, in 1990, the Justice Department had ruled that because the State Department was not a "law enforcement agency", it no longer had free access to the FBI's National Crime Information Center. This system, which maintains arrest and criminal information from a wide variety of federal, state, and local sources as well as from Canada, is used by the State Department to deny visas. Tellingly,

after it lost access to the NCIC, 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.

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. To address this, 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 only provided the State Department with free access to these FBI resources for purposes of processing immigrant visas—dropping my requirement for non-immigrant visas eventually used by at least 16 of the 19 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. Thus, today, information sharing remains optional and ad hoc.

To further fortify our front-line defenses against terrorism, I also propose to assist our embassies in turning-back terrorists at their point of origin 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.

Clearly, the catastrophic events of September 11 have catapulted us into a different era, and everything is forever changed. We must move heaven and earth to remove the impediments that keep us from maximizing our defense against terrorism, and that is why we need a singular, Cabinet-level authority that can change the prevailing system and culture. Ironically, the most compelling reason for an Office of Homeland Security is also its greatest challenge: the need to focus on the "three C's" of coordination, communication and cooperation so that all our resources are brought to bear in securing our nation. 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.

Mr. BYRD. Mr. President, in the aftermath of the terrorist attacks on the World Trade Center and the Pentagon, the attention of the American people has turned to the security of our national border system and how these attackers were able to exploit that system to plot these dastardly acts.

The September 11 attacks have highlighted numerous loopholes in our immigration laws that have allowed terrorists to enter the United Stats posing as students and tourists, and, in some cases, by simply walking across an unpatrolled border. In reviewing our counter-terrorism efforts within our intelligence community, it is also appropriate that we look at the numerous immigration loopholes these terrorists were able to slip through.

There are currently between 7 million and 13 million illegal aliens living in the United States. Six out of 10 of these aliens crossed a U.S. border illegally, and therefore were not subject to background checks by the INS or the State Department to determine if they had a terrorist or criminal history. In fact, exit/entry records are so incomplete that the Immigration and Naturalization Service, INS, has no record of 6 of the 19 suspected hijackers entering the United States.

Of the roughly 10,000 INS agents guarding our borders, only 3 percent are stationed on our northern border with Canada. That's 334 agents protecting a 4,000 mile border, or one agent for every 12 miles. According to media reports, a number of the September 11 terrorists crossed this border to enter the United States.

Of those foreign nationals who have legally entered the United States, more than a half-a-million of them are registered as international students at 15,000 universities, colleges, and vocational schools across the United States. These are nuclear engineering scholars, biochemistry students, and even pilot trainees who have access to dangerous technology, training, and information.

The Congress passed legislation in 1996 requiring the INS to create a database for tracking these students. The purpose was to more efficiently monitor the immigration/visa status and whereabouts of students from abroad. After 5 years, there is still no system in place to monitor these 500,000 students. The current pilot program operating at 21 schools is not expected to be fully operational for five more years, and even that date could slip.

Without a monitoring system in place to audit schools that sponsor these foreign students, there is nothing to prevent an alien from entering the United States on a student visa and then just disappearing. Consequently, one of the September 11 hijackers was able to enter the United States on a student visa, dropped out, and remained illegally thereafter.

Abuses of the visa system can also be found in the application process overseas at our U.S. consulates. Foreign nationals must apply for a visa at a U.S. consulate abroad and go through a series of security checks before they can enter the United States. Some media reports have raised the issue of consulate shopping, that is, foreign nationals choosing to apply at a U.S. consulate that they believe is most likely to grant them a visa. The "New York Times" reported in September that Chinese nationals applying for visas at a U.S. consulate in Beijing compare their experiences over the Internet—and even post tips on how to act and what to say, to boost their chances of receiving a visa.

Such an article raises the question of whether a terrorist could travel from country to country in hopes of finding a U.S. consulate which would be less familiar with his background and more likely to award him a visa. One terrorist who was involved in the 1993 World Trade Center bombing was denied a visa at the U.S. consulate in Egypt, only to be awarded a visa by the U.S. consulate in Sudan.

And these are loopholes that exist only for those terrorists who would risk a background check by seeking a visa at a U.S. consulate. The United States allows 29 countries to participate in a visa-waiver program, which effectively allows the citizens of many European countries to bypass the initial screening process at a U.S. consulate abroad by waiving the visa requirement. The Inspectors General for both the State and Justice Departments have raised the possibility that a foreign national could steal and counterfeit a visa-free passport to bypass the visa background check altogether.

The October 8 Wall Street Journal reported that some 1,067 visa-free passports have been stolen in recent months, presumably to be used for entry into the United States. In fact, one of the terrorists who plotted the bombing of the 1993 World Trade Center bombing was caught trying to slip through this loophole in 1992 when he tried to enter the United States using a visa-free Swedish passport.

These are just some of the loopholes that terrorists are trying to exploit. To its credit, the Senate Judiciary Committee recognizes this fact.

The legislation drafted by the committee would triple the number of INS agents on our northern border. This is a worthwhile investment, and one that should be made. However, the security of our borders depends on more than just INS agents. The first line of defense against terrorists are our U.S. consulates abroad.

We must address the loopholes in the visa-waiver program that would allow a potential terrorist to enter the United States on a stolen passport. We must prevent consulate shopping. And, we must fully implement a system that can monitor foreign students.

The State and Justice Departments confirm that these are real security threats that must be addressed if we are to protect our borders from terrorists.

I have offered three amendments to address these concerns, which were accepted by the Judiciary Committee chairman and ranking member into the manager's package.

My first amendment would authorize the necessary funding so that the Justice Department could immediately put into place a tracking system that would require every university, college, and vocational school to submit a name, an address, an enrollment status, and disciplinary action taken on each of the international students that these educational institutions sponsor. Such a database would be invaluable to law enforcement officials who may need to identify and locate a potential terrorist immediately.

My second amendment would tighten the visa-waiver program by requiring that any country that participates in that program issue to its citizens within 2 years machine-readable passports that U.S. officials could scan into a "look out" system. This moves forward the original statutory deadline Congress agreed to last year by 4 years.

This amendment would also require the State Department to regularly audit the passports of these visa-free countries to ensure that countries that participate in this program have implemented sufficient safety precautions to prevent the counterfeiting and the theft of their passports.

My third amendment would require the State Department to review how it issues its visas to determine if consulate shopping is a problem, and then require the Secretary of State to take the necessary steps to correct the problem. The State Department has the legislative authority it needs to fix this problem. It is now imperative that it use that authority.

My amendments are important steps toward closing down the loopholes in our immigration laws, and I look forward to working with my colleagues so that we may continue to tighten the security of national borders.

Mr. HATCH. Mr. President, three weeks ago, the President of the United States—with the undivided support of this Congress and the American people—announced a war on terrorism. In that address, he asked Congress to provide our law enforcement community with the tools that they need to wage that war effectively.

After several weeks of negotiations with the Chairman and the Administration, I am pleased we have come to the point where we can pass a bipartisan, measured bill that does just that.

Mr. President, each of us has, in different ways, had our lives touched by the awful events of September 11th. Each of us has, in the days since the attack, been shocked and appalled by the terrible images of destruction that have reached us, by television, by newspaper—and in many cases by our own eyes—from the sites of the attacks in Pennsylvania, at the World Trade Center, and at the Pentagon.

Paradoxically, each of us has also been uplifted by the stories of heroism and self-sacrifice that have emerged from around the country in the wake of these terrible events.

As the President made clear in his address to the nation, we did not seek this war. This war was thrust upon us—thrust upon us by an unprovoked attack upon our civilian population in the very midst of our greatest cities.

Just one month ago, we could not have contemplated that today, October 11th, 2001, we would be at war. It is true that, for years, some of us in this Congress, and around the country, have warned that there were powerful, well-financed individuals located throughout the world who were dedicated to the destruction of our way of life. But, few of us could predict the horrific methods that these men would employ in an effort to destroy us and our democratic institutions.

On September 11th, all that changed.

In the last few weeks, we have all come to acknowledge that we live in a different and more dangerous world than the world we thought we knew when we woke up on the morning of September 11th . . .

. . . A different world—not only because thousands of our countrymen are dead as a result of the September 11th attacks . . .

. . . A different world—not only because many of our neighbors now hesitate to get on an airplane, or ride in an elevator, or engage in any one of a number of activities that we took for granted before the attacks . . .

. . . But a different world, also, because we must acknowledge that there remains an ongoing and serious threat to our way of life and, in fact, to our health and well-being as a society.

As has been reported in the national media, the investigation into the September 11th attacks has revealed there are terrorist cells that continue to operate actively among us. It is a chilling thought, but it is true.

The war to which we have collectively committed is a war unlike any war in the history of this country. It is different because a substantial part of this war must be fought on our own soil. This is not a circumstance of our choosing. The enemy has brought the war to us.

But we must not flinch from acknowledging the fact that, because this is a different kind of war, it is a war that will require different kinds of weapons, and different kinds of tactics.

The Department of Justice, and its investigatory components including the FBI, the INS, and the Border Patrol, will continue to have the principal responsibility for identifying and eradicating terrorist activity within our national borders. Our intelligence community must have access to critical information available to our law enforcement community.

Over the last several weeks, the Attorney General has made clear to us, in no uncertain terms, that he does not currently have adequate weapons to fight this war. Weeks ago, the Administration sent to Congress a legislative proposal that would give the Department of Justice and others in law enforcement the tools they need to be effective in tracking down and eliminating terrorist activity in this country.

Over the last several weeks, Senator LEAHY, other members of the Judiciary Committee, and I have undertaken a painstaking review of the anti-terrorism proposal submitted by the Administration. There have been several hearings on this legislation in the Senate, and many briefings by experts and advocates.

The legislation that we are about to vote upon is a product of intense bipartisan negotiations. It is a proposal I am proud to cosponsor with my other colleagues in the Senate and particularly the distinguished Chairman of the Judiciary Committee, Senator LEAHY.

I would like to congratulate Senator LEAHY, in particular, for his thoroughness in reviewing this legislation and his many thoughtful comments and suggestions in our joint effort to ensure that the proposals adequately protect the constitutional liberties of all Americans.

Now, after weeks of fine-tuning, we have reached a final product that accommodates the concerns of each of the Senators who has examined this bill. The bipartisan bill that we vote on today respects the constitutional liberties of the American people and, at the same time, does what people around America have been calling upon us in Congress to do—that is, give our law enforcement community the tools they need to keep us safe in our homes, in our travels, and in our places of business.

I would like to make a few comments regarding the process for this legislation. Although we have considered this in a more expedited manner than other legislation, my colleagues can be assured that this bill has received thorough consideration. First, the fact is that the bulk of these proposals have been requested by the Department of Justice for years, and have languished in Congress for years because we have been unable to muster the collective political will to enact them into law.

No one can say whether these tools could have prevented the attacks of September 11th. 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 say to my colleagues, Mr. President, that if these tools could help us now to track down the perpetrators—if they will help us in our continued pursuit of terrorist activities within our national borders—then we should not hesitate any further to pass these reforms into law. As long as these reforms are consistent with our Constitution—and they are—it is difficult to see why anyone would oppose their passage.

Furthermore, I would like to clearly dispel the myth that the reforms in this legislation somehow abridge the Constitutional freedoms enjoyed by law-abiding American citizens. Some press reports have portrayed this issue

as a choice between individual liberties on the one hand, and on the other hand, enhanced powers for our law enforcement institutions. This is a false dichotomy. We should all take comfort that the reforms in this bill are primarily directed at allowing law enforcement agents to work smarter and more efficiently—in no case do they curtail the precious civil liberties protected by our Constitution. I want to assure my colleagues that we worked very hard over the past several weeks to ensure that this legislation upholds all of the constitutional freedoms our citizens cherish. It does.

I would like to take a minute to explain briefly a few of the most important provisions of this critical legislation.

First, the legislation encourages information-sharing between various arms of the federal government. I believe most of our citizens would be shocked to learn that, even if certain government agents had prior knowledge of the September 11th attacks, under many circumstances they would have been prohibited by law from sharing that information with the appropriate intelligence or national security authorities.

This legislation makes sure that, in the future, such information flows freely within the Federal government, so tat it will be received by those responsible for protecting against terrorist attacks.

By making these reforms, we are rejecting the outdated Cold War paradigm that has prevented cooperation between our intelligence community and our law enforcement agents. Current law does not adequately allow for such cooperation, artificially hampering our government's ability to identify and prevent acts of terrorism against our citizens.

In this new war, Mr. President, terrorists are a hybrid between domestic criminals and international agents. We must lower the barriers that discourage our law enforcement and intelligence agencies from working together to stop these terrorists. These hybrid criminals call for new, hybrid tools.

Second, this bill updates the laws relating to electronic surveillance. Electronic surveillance, conducted under the supervision of a federal judge, is one of the most powerful tools at the disposal of our law enforcement community. It is simply a disgrace that we have not acted to modernize the laws currently on the books which govern such surveillance, laws that were enacted before the fax machine came into common usage, and well before the advent of cellular telephones, e-mail, and instant messaging. The Department of Justice has asked us for years to update these laws to reflect the new technologies, but there has always been a call to go slow, to seek more information, to order further studies.

This is no hypothetical problem. We now know that e-mail, cellular telephones, and the Internet have been principal tools used by the terrorists to coordinate their atrocious activities. We need to pursue all solid investigatory leads that exist right now that our law enforcement agents would be unable to pursue because they must continue to work within these outdated laws. It is high time that we update our laws so that our law enforcement agencies can deal with the world as it is, rather than the world as it existed 20 years ago.

A good example of the way we are handicapping our law enforcement agencies relates to devices called "pen registers." Pen registers may be employed by the FBI, after obtaining a court order, to determine what telephone numbers are being dialed from a particular telephone. These devices are essential investigatory tools, which allow law enforcement agents to determine who is speaking to whom, within a criminal conspiracy.

The Supreme Court has held, in Smith v. Maryland, that the information obtained by pen register devices is not information that is subject to ANY constitutional protection. Unlike the content of your telephone conversation once your call is connected, the numbers you dial into your telephone are not private. Because you have no reasonable expectation that such numbers will be kept private, they are not protected under the Constitution. The Smith holding was cited with approval by the Supreme Court just earlier this year.

The legislation under consideration today would make clear what the federal courts have already ruled—that federal judges may grant pen register authority to the FBI to cover, not just telephones, but other more modern modes of communication such as e-mail or instant messaging. Let me make clear that the bill does not allow law enforcement to receive the content of the communication, but they can receive the addressing information to identify the computer or computers a suspect is using to further his criminal activity.

Importantly, reform of the pen register law does not allow—as has sometimes been misreported in the press—for law enforcement agents to view the content of any e-mail messages—not even the subject line of e-mails. In addition, this legislation we are about to vote upon makes it explicit that content can not be collected through such pen register orders.

This legislation also allows judges to enter pen register orders with nationwide scope. Nationwide jurisdiction for pen register orders makes common sense. It helps law enforcement agents efficiently identify communications facilities throughout the country, which greatly enhances the ability of law enforcement to identify quickly other members of a criminal organization, such as a terrorist cell.

Moreover, this legislation provides our intelligence community with the same authority to use pen register devices, under the auspices of the Foreign Intelligence Surveillance Act, that our law enforcement agents have when investigating criminal offenses. It simply makes sense to provide law enforcement with the same tools to catch terrorists that they already possess in connection with other criminal investigations, such as drug crimes or illegal gambling.

In addition to the pen register statute, this legislation updates other aspects of our wiretapping statutes. It is amazing that law enforcement agents do not currently have authority to seek wiretapping authority from a federal judge when investigating a terrorist offense. This legislation fixes that problem.

Moving on, I note that much has been made of the complex immigration provisions of this bill. I know Senators SPECTER, KOHL and KENNEDY had questions about earlier provisions, particularly the detention provision for suspected alien terrorists.

I want to assure my colleagues that we have worked hard to address your concerns, and the concerns of the public. As with the other immigration provisions of this bill, we have made painstaking efforts to achieve this workable compromise.

Let me address some of the specific concerns. In response to the concern that the INS might detain a suspected terrorist indefinitely, Senator KENNEDY, Senator KYL, and I worked out a compromise that limits the provision. It provides that the alien must be charged with an immigration or criminal violation within seven days after the commencement of detention or be released. In addition, contrary to what has been alleged, the certification itself is subject to judicial review. The Attorney General's power to detain a suspected terrorist under this bill is, then, not unfettered.

Moreover, Senator LEAHY and I have also worked diligently to craft necessary language that provides for the deportation of those aliens who are representatives of organizations that endorse terrorist activity, those who use a position of prominence to endorse terrorist activity or persuade others to support terrorist activity, or those who provide material support to terrorist organizations. If we are to fight terrorism, we can not allow those who support terrorists to remain in our country. Also, I should note that we have worked hard to provide the State Department and the INS the tools they need to ensure that no applicant for admission who is a terrorist is able to secure entry into the United States through legal channels.

Finally, the bill gives law enforcement agencies powerful tools to attack the financial infrastructure of terrorism—giving our government the ability to choke off the financing that these dangerous terrorist organizations need to survive. It criminalizes the practice of harboring terrorists, and puts teeth in the laws against providing material support to terrorists