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# *Senate*

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Sovereign Ruler of the Universe, today we sense that our battles are not simply with flesh and blood. We war against principalities and powers. Thank You for providing us with spiritual weapons to defeat carnal foes.

Forgive us when we chase the temporary and flee from the permanent. Empower us to capture our thoughts and actions, making them subject to Your will.

Give our lawmakers today an awareness of the complexity of the great controversy between good and evil. Speak to them when they look to You for guidance. Remind them that truth crushed to earth will rise again. Bless our military sons and daughters in harm's way. We pray this in Your powerful Name. Amen.

## PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

The PRESIDING OFFICER (Mr. BROWNBACK). The Senator from Massachusetts.

## ORDER OF PROCEDURE

Mr. KENNEDY. Mr. President, I note that our leaders are talking. Obviously, the tradition is to recognize or permit them to address the Senate, but I would like to speak just for a few moments this morning on a matter.

Mr. REID. Mr. President, I have a unanimous consent request. Will the Senator yield for a unanimous consent request?

Mr. KENNEDY. Yes.

Mr. REID. Mr. President, I ask unanimous consent that when the leaders finish their statements, that Senator KENNEDY be recognized.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

## RECOGNITION OF THE MAJORITY LEADER

The PRESIDING OFFICER. The majority leader is recognized.

## SCHEDULE

Mr. FRIST. Mr. President, this morning the Senate will resume consideration of the intelligence reform bill. As our colleagues know, several amendments are currently pending to the bill, including the Specter intelligence consolidation amendment. We do hope to reach a time agreement on that amendment this morning, allowing us to vote on the Specter amendment. I know Senator SPECTER is here. I hope we make real progress on that amendment this morning. Hopefully, we can have a vote sometime this morning. The chairman and ranking member, of course, will be here to work through pending amendments as well as those that may be offered today.

I was just talking to the Democratic leader. We are going to have votes throughout the day, as we continue to move forward on this bill. In addition, because of a number of amendments we know we have to consider and will consider—I do not know the entire range—it is very likely that we will need to continue to work throughout today, tomorrow, possibly Friday, and we cannot rule out having votes on Friday, and indeed on Monday. Many times we try to schedule votes such that we pay deference to individual Senators' schedules, and we will try to do that as well.

On the other hand, as we all know, we are going to depart on October 8, and with that we have a huge amount of business to do, with this very bill, the single greatest reform bill on intelligence in the last 50 years, and we need to continue to work with the extensions, the continuing resolution, address transportation, address welfare, and have the appropriations bills as well. So from a scheduling standpoint, I ask for real consideration by our colleagues in that we need to move expeditiously, get the amendments to the floor, and have them appropriately debated.

Mr. DASCHLE. Mr. President, will the majority leader yield for a question?

Mr. FRIST. I am happy to yield.

Mr. DASCHLE. Mr. President, the majority leader and I have been talking the last couple days with regard to the schedule for this particular bill. I would ask the majority leader if he could again indicate his desire, and certainly one that I can support, which would set in motion a series of events requiring today that all amendments be listed; that is, we would have a finite list, and that by tomorrow all amendments be filed, and that at some point in this debate, in the next couple of days, all amendments be offered.

I think it is very important for us to have a clear understanding of the universe of amendments that are there. If we get that finite list this morning, or sometime through the earlier part of the day, and then the order requiring that all amendments be filed so we know exactly what the language is for those amendments, and then offered, we would be in that position.

I ask the majority leader if that is his intent. And we could work through the day with that expectation in mind.

Mr. FRIST. Mr. President, through the Chair, in response, as we discussed yesterday, if we could get the list of amendments, I think we said by about 10 o'clock this morning—and I think those lists have been coming in—and the filing deadline, let's discuss that

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

over the course of the morning. It would be great if we could do it even late today so we could work on those over the course of tonight. But, again, we defer to leadership and the managers, but it would be great to have that language. That would give people from last night over the course of today to finalize that language. So I agree weakheartedly.

I would just suggest that maybe we could have that filing deadline sometime today or this evening and have staff work over the course of the day rather than tomorrow. Again, it is just so that we can see what the universe is and we can systematically put a little bit of a sense of urgency on getting people to focus on the bill itself. But I agree wholeheartedly, let's have a list here in the next 20 minutes or so, and then mutually establish a filing deadline by which we can actually see the language.

Mr. DASCHLE. I would just ask the majority leader if it is his view as well, since these amendments require legislative drafting, that all Senators ought to understand that the period for drafting these amendments could expire as early as tomorrow. So they need to get their amendments to legislative counsel to make sure they are in concert with the pending bill. I ask if the majority leader shares that view.

Mr. FRIST. Mr. President, I do. I think our colleagues can tell from the dialog going on that we, as leadership, are trying to give a framework to accelerate the process that is currently underway in discussing a very important bill. Our colleagues have met in various caucuses. I know a lot of our Members on this side of the aisle are meeting right now, and we are putting forth the same message to bring those amendments forward. And the managers will process those in an orderly way.

Mr. President, I want to very briefly comment on the bill. We received yesterday the administration's statement of policy that is in support of the Collins-Lieberman bill. I think that was a very important statement for us to receive to show the administration's strong support. In the expression of support, and support for passage of the Collins-Lieberman bill, there were comments made about certain provisions about which they have caution flags. That will be addressed appropriately on the floor of the Senate.

So I am glad we received the letter yesterday. It allows us to address many of those concerns through debate and amendment over today and tomorrow and the next several days.

The administration specifically backs the creation of a national intelligence director with—and I quote from the letter—''full, effective, and meaningful budget authorities and other authorities to manage the Intelligence Community, including statutory authority for the newly created National Counterterrorism Center.''

I mention that because it shows the huge support for reform. There is nothing really that new about the reform. There have been 13 reports, national commissions over the last 10, 15, 20 years, 13 different ones urging intelligence reform. Now it is on the floor of the Senate. Indeed, we will accomplish that.

I do want to stress that we have both the reform of the executive branch, which is mainly the Collins-Lieberman bill, but we also have the internal reform within this body itself for oversight. Both of those, of course, were recommendations of the 9/11 Commission. The Democratic leader and I have a task force working on the internal reform. Both of those elements of reform are going to be dealt with before we depart. That is a lot of business to accomplish, and that is why there is a sense of urgency in moving along.

Yesterday, we voted on a number of amendments, including the McCain amendment and the Hutchison amendment. We will see more provisions of the McCain-Lieberman bill come through with amendments to be addressed on the Senate floor as they look at specific 9/11 recommendations.

We do want to do this expeditiously. After we pass the bill, we have to go to the conference with the House and work out any differences between the two bills.

I also want to mention briefly the news that came out regarding the FBI and the shortage of linguists to translate intelligence materials. That sort of news is alarming. After 9/11, we know we can't be behind the curve. Our enemies are smart. They are clever, resourceful. We have seen it time and again. We need an intelligence system that will block them at every turn. It is my hope that the Collins-Lieberman legislation will help address this problem. The recruitment of linguists is specifically cited as one of the issues the bill seeks to address.

Moreover, in the bill the new national intelligence director will have the authority to prioritize and allocate resources appropriately. Clearly, this issue would likely fall under that person's purview. Whether it is strengthening the FBI or buttressing the CIA or integrating our intelligence capabilities, these are among the many reasons we have to move with deliberate speed to finish this legislation. Nothing less than America's national security is at stake.

I yield the floor.

## RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER. The minority leader is recognized.

## INTELLIGENCE REFORM

Mr. DASCHLE. Mr. President, in discussing these matters with the majority leader, there is somewhat of a rare consensus here that the two matters he has raised once again this morning are critical, not only to this body but to the country, and must be addressed prior to the time we leave. The bill currently pending, managed so well by Senators COLLINS and LIEBERMAN, and the task force and the effort to reorganize the legislative branch creating greater oversight and clearer lines of responsibility for intelligence are critical matters and high priorities. I hope we can continue to keep the discipline and focus on this legislation until we have successfully completed it.

I am optimistic, given the cooperation and the degree of comity on these matters, that we can complete our work, but I do believe it is going to take the kind of schedule that the majority leader and I addressed a moment ago.

## OUR RESPONSIBILITY TO AMERICA'S HEROES

Mr. DASCHLE. Mr. President, over the past 4 years, as we have watched the heroism of our men and women in uniform, our Nation has gained a new awareness for the service and sacrifice of American soldiers. In communities all across our country, Americans are praying for the safe return of loved ones serving abroad. They are sending letters and care packages and small reminders of home. But they are counting the days until they can show the thanks they feel and our soldiers deserve face to face.

Few values bring Americans more closely together than our gratitude and respect for the men and women who serve in uniform to protect us. And today, all America is united in gratitude for the service of our Armed Forces and for the many sacrifices their families must make to accommodate their absence.

Regrettably, there are troubling signs that the tremendous burdens we have placed on their shoulders have begun to come at a cost. In recent weeks, we have learned that the National Guard and Reserves are having difficulty recruiting and retaining enough soldiers to defend our country. For the first time in a decade, the Army Guard is unable to meet its requirement for 350,000 soldiers. Too many soldiers are leaving and recruiting can't keep up.

A regular survey of reservists has found that the percentage of Army Reserve members who plan to reenlist has fallen from 69 percent in May 2003 to 59 percent in May 2004. There can be no doubt, the stress of long deployments and active duty are having an effect on recruiting.

Increasingly, our national security is put in the hands of the citizens soldiers of our National Guard and Reserve. When recruitment for the Guard and Reserve falls off, it threatens to undermine the readiness and the effectiveness of our Armed Forces. Let there be no doubt: Now more than ever, we need our Armed Forces to be strong and prepared enough to meet the threats we face today and those we may see tomorrow.

Earlier in the week, the New York Times reported that the Army is considering cutting the length of its 12-month combat tours in Iraq and Afghanistan in order to relieve the stress of duty. This could be a positive step. Special attention also needs to be paid to considering new ways to honor the service of our reservists and offer new incentives for signing up. The debt we owe our soldiers shouldn't be limited to a welcome-home parade. It begins before we send them abroad and it shouldn't end when they return home. This is a debt we must honor every day.

But consider the welcome home thousands of Guard members received when they returned stateside recently only to find they had lost their jobs while they were fighting in Iraq. Over the past 3 years, thousands of Guard members and reservists have come home to find themselves out of work.

Ron Vander Wal, a member of South Dakota Guard's 200th Engineer Company had to sue his employer just to get his old job back. Ron is now back at work, but he never should have had to go to court to get what was rightfully his.

Thousands more aren't as fortunate. And every time a soldier returns home to find that he has less than when he left to fight, we have failed that soldier. How can we ask our soldiers to fight for us overseas and then force them to fight for their jobs once they get home? Sadly, this is only the tip of the iceberg.

More than 400,000 reservists and National Guard members have been mobilized since September 11, 2001. They represent 40 percent of our forces in the region. Their bravery and professionalism have been vital to every aspect of our mission in Iraq. Many of them have been working to improve the lives and health of average Iraqis. And yet, when they return, one out of every five Guard members and Reservists—and 40 percent of junior enlisted personnel—will have no health insurance of their own. That is simply unacceptable.

This kind of neglect is regrettably reflected in our treatment of veterans, as well. Last month, I spoke to a woman from Hartford, SD, whose father served in the Navy—in Vietnam and elsewhere. Recently, her father died, and in his final months the family struggled with the VA to get the benefits he needed. This woman became quite frustrated with the VA and its ability to care for veterans. Today, this woman who loves her country and is proud of her father's service says she will advise her children against joining the military, because she feels our country just doesn't take care of its vets in their hours of greatest need.

That is intolerable. Not only is it morally wrong not to honor the service of our veterans, but it directly affects our ability to recruit the next generation of American heroes. Something needs to be done.

Let there be no doubt, the problems with the VA health system are not the fault of the doctors and nurses and the other men and women who work at VA hospitals and clinics. They are among the most talented, most dedicated health professionals in this country. But they can only do so much with the resources they are given. And from the first days of this administration, the White House has systematically tried to reduce veterans benefits, cut funding to the VA, and shortchange the healthcare of America's veterans.

Over the past 4 years, the budget for veterans health has risen far less than has the cost of delivering health care, forcing VA hospitals to meet rising demand with shrinking resources. The White House's 2005 budget deepens this trend by including less than a one-tenth of one percent funding increase, while health costs nationwide are rising at double digit rates of inflation. Overall, the White House budget falls nearly $4.3 billion short of veterans' needs, according to the independent budget created by leading nonpartisan veterans groups.

The veterans least able to pay are being asked to pick up the difference. Over the course of the last 3 years, the amount vets have paid toward their own care has increased a staggering 340 percent, or $561 million. And if the White House gets its way, vets would need to pick up more than a half billion dollars more of their care in 2005.

This is wrong. Americans treasure their freedom and we treasure those who have sworn to defend it. The kind of treatment our veterans and reservists are receiving defies the gratitude Americans feel in their hearts and betrays our tradition of caring for those who wore the uniform of their country.

There are two steps Congress should take immediately. First, we should pass the National Guard and Reservist Bill of Rights which I introduced earlier this month. This bill codifies a set of rights the men and women serving in our National Guard and Reserve have earned with their service to our Nation. It states that every reservist has the right to straight answers about his or her deployments, and deployments that are no longer than those of full-time soldiers; the right to the best equipment the Nation has to offer; the right to adequate, timely, and problem-free compensation; the right to child care for his or her family; the right to quality, affordable health care; the right to employment when he or she returns home; the right to education benefits; the right to a fair retirement plan; and the right to representation at the highest levels of the Department of Defense. Perhaps most important, this bill of rights would ensure that the Guard and Reserve remain attractive opportunities for Americans who want to serve their country.

Second, it is time we made good on a simple promise to veterans: If you wore the uniform of our Nation, if you fought under our flag, your health care needs will be met for life. The full funding of veterans health care should be made mandatory under law. For too long, the VA budget has been subject to the give and take of budget politics. We need to set things straight. The funding for the VA should no longer be set by political convenience, or back-room deals, or the zero-sum game of budget politics. One thing, and one thing alone, should govern the care of our veterans; that is, the needs of our veterans.

How could we do otherwise? How could we let our country move forward and leave behind the men and women whose bravery has won our freedom and prosperity? Moreover, how could we let our children grow up believing that our Government fails to honor and repay those who risk their lives in service to the Nation.

We cannot afford to wake up one day and discover that our military lacks the manpower it needs to defend our country. The signs of an impending recruitment crisis are all around us. We should not let this Congress adjourn without taking real steps to prevent this developing problem from undermining the strength of our military for years to come. It is time to act.

I yield the floor.

The PRESIDING OFFICER. The majority leader is recognized.

## ORDER OF PROCEDURE

Mr. FRIST. Mr. President, very quickly, I understand the Senator from Massachusetts will be recognized shortly. I ask him, is he going to be speaking on the underlying bill?

Mr. KENNEDY. I will be speaking about issues that are included in the underlying bill.

Mr. FRIST. I will ask that following the Senator's time we be given a like amount of time to comment on whatever subject it would be. Then I encourage that we would be able to go straight to the underlying bill. We have the managers here, and I know the Senator has a statement he wants to make.

I ask unanimous consent that Senator KYL follow Senator KENNEDY, with a similar amount of time to respond on the topic, whatever it may be, and we will go straight to the bill. I want to encourage us to stay on the underlying bill.

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

The Senator from Massachusetts is recognized.

## POLICY IN IRAQ

Mr. KENNEDY. Mr. President, I thank the leader and the leadership. I know the matters we have before us are of great importance and urgency. So is the matter about which I will address the Senate.

By any reasonable standard, our policy in Iraq is failing. We are steadily losing ground in the war. Even after

9/11, it was wrong for this President or any President to shoot first and ask questions later, to rush to war and ignore or even muzzle serious doubts by experienced military officers and experienced officials in the State Department and the CIA about the rationale and justification for the war, and the strategy for waging it.

We all know that Saddam Hussein was a brutal dictator. We have known it for more than 20 years. We are proud, very proud, of our troops for their extraordinary and swift success in removing Saddam from power.

But as we also now know beyond doubt, Saddam did not pose the kind of immediate threat to our national security that could possibly justify a unilateral, preventive war without the broad support of the international community. There was no reason whatsoever to go to war when we did, in the way we did, and for the false reasons we were given.

The administration's insistence that Saddam could provide nuclear material or even nuclear weapons to al-Qaida has been exposed as an empty threat. It should have never been used by President Bush to justify an ideological war that America never should have fought.

Saddam had no nuclear weapons. In fact, not only were there no nuclear weapons, there were no chemical or biological weapons either, no weapons of mass destruction of any kind.

Nor was there any persuasive link between al-Qaida and Saddam and the 9/11 attacks. A 9/11 Commission Staff Statement put it plainly:

> Two senior bin Laden associates have adamantly denied that any ties existed between al-Qaida and Iraq. We have no credible evidence that Iraq and al-Qaida cooperated on attacks against the United States.

The 9/11 Commission Report stated clearly that there was no ''operational'' connection between Saddam and al-Qaida.

Secretary of State Colin Powell now agrees that there was no correlation between 9/11 and Saddam's regime. So does Secretary of Defense Donald Rumsfeld. Nevertheless, President Bush continues to cling to the fiction that there was a relationship between Saddam and al-Qaida. As the President said in his familiar Bush-speak, ''The reason that I keep insisting that there was a relationship between Iraq and Saddam and al-Qaida is because there was a relationship between Iraq and al-Qaida.''

That's the same logic President Bush keeps using today in his repeated stubborn insistence that the situation is improving in Iraq, and that we and the world are safer because Saddam is gone.

The President and his administration continue to paint a rosy picture of progress in Iraq. Just last Wednesday, he referred to the growing insurgency as ''a handful of people.'' Some handful.

Vice President CHENEY says we're ''moving in the right direction,'' despite the worsening violence. Our troops are increasingly the targets of deadly attacks. American citizens are being kidnapped and brutally beheaded.

But Secretary Rumsfeld says he's ''encouraged'' by developments in Iraq.

Our colleague Senator LINDSEY GRAHAM doesn't buy that, and he has said so clearly: ''We do not need to paint a rosy scenario for the American people.''

Neither does our colleague Senator HAGEL, a Vietnam veteran and a member of the Senate Foreign Relations Committee. As he stated unequivocally last week, ''I don't think we're winning . . . The fact is, we're in trouble. We're in deep trouble in Iraq.''

The National Intelligence Estimate in July, although not yet made public, made this point as well—and made it with such breathtaking clarity that for the good of our country, officials leaked it to the press. The New York Times said the estimate ''spells out a dark assessment of prospects for Iraq.'' The same Times report and other reports, the National Intelligence Estimate outlines three different possibilities for Iraq through the end of next year. The worst-case scenario is that Iraq plunges into outright civil war. The best-case scenario—the best case—is that violence in Iraq continues at current levels, with tenuous political and economic stability.

President Bush categorically rejected that analysis, saying the CIA was ''just guessing.'' Last week, he retreated somewhat. He said he should have used ''estimate'' instead of ''guess.''

In other words, the best case scenario between now and the end of 2005 is that our soldiers will be bogged down in a continuing quagmire with no end in sight. President Bush refused to give the time of day to advice like that by the best intelligence analysts in his administration, but the American people need to hear it.

We learned in yesterday's New York Times that the President was also warned by intelligence officials before the war that the invasion could increase support for political Islam and result in a deeply divided society in Iraq, a society prone to violent internal conflict. Before the war, President Bush received a report that warned of the possible insurgency.

It is listed on the front page of the New York Times. Just to mention part of the story:

> ''The same intelligence unit that produced a gloomy report in July about the prospects of growing instability in Iraq warned the Bush administration about the potentially costly consequence of an American-led invasion 2 months before the war began,'' Government officials said Monday. The assessments predicted that an American-led invasion of Iraq would increase support for political Islam and would result in a deeply divided Iraq society prone to violent internal conflict. The assessment also said a war would increase sympathy across the Islamic world for some terrorist objectives, at least in the short run.

That is the warning this President had, but he rushed headlong into the war with no plan to win the peace. Now, despite our clear failures, the President paints a rosy picture. Look at today's national newspapers. The Washington Post, on the front page, says:

> Growing Pessimism on Iraq. A growing number of career professionals within the national security agencies believe that the situation in Iraq is much worse, and the path to success much more tenuous, than is being expressed in public by top Bush administration officials. . . .
>
> ''While President Bush, Defense Secretary Donald H. Rumsfeld and others have delivered optimistic public appraisals, officials who fight the Iraqi insurgency and study it at the CIA and State Department and within the Army officer corps believe the rebellion is deeper and more widespread than is being publicly acknowledged,'' officials say.
>
> People at the CIA ''are mad at the policy in Iraq because it's a disaster, and they're digging the hole deeper and deeper. . . .''
>
> ''Things are definitely not improving.''

When is the President going to level with the American people?

In the New York Times today—these are in the last 2 days, Mr. President—on the front page it says: ''Baghdad,'' and this is a different story:

> Over the past 30 days, more than 2,300 attacks by insurgents have been directed against civilians and military targets in Iraq, in a pattern that sprawls over nearly every major population center outside the Kurdish north, according to comprehensive data compiled by a private security company with access to military intelligence reports and its own network of Iraqi informants.
>
> The sweeping geographical reach of the attacks . . . suggests a more widespread resistance than the isolated pockets described by the Iraqi government officials.

The outlook is bleak, and it is easy to understand why. It is because the number of insurgents has gone up. The number of their attacks on our troops has gone up. The sophistication of the attacks has gone up. The number of our soldiers killed or wounded has gone up. The number of hostages seized and even savagely executed has gone up.

Our troops are under increasing fire. More than 1,000 of America's finest young men and women have been killed. More than 7,000 have been wounded. In August alone, we had 863 American casualties. Our forces were attacked an average of 70 times a day, higher than for any month since President Bush dressed up in a flight suit, flew out to the aircraft carrier, and recklessly declared, ''Mission accomplished'' a year and a half ago.

The President, the Vice President, the National Security Council, Secretary Rumsfeld, and other civilian leaders in the Pentagon failed to see the insurgency that took place last year and that began to metastasize like a deadly cancer. How could they have not noticed?

Perhaps because they were still celebrating their ''mission accomplished.''

For 2 years, terrorist cells in Iraq have been spreading like cancer. Any doctor who would let that happen to a patient would be guilty of malpractice.

In many places in Iraq today, it is too dangerous to go out even with guards. The streets are so dangerous that some parents are apparently keeping their children home from school, afraid they will be kidnapped, or worse, along the way.

The State Department does not attempt to conceal the truth about the danger, at least in its travel warnings. Its September 17 advisory states that Iraq remains very dangerous.

At the end of August, a bloody 3-week battle in Najaf ended with an agreement that U.S. troops would give up the city. Fallujah and now other cities are no-go zones for our troops, presumably to avoid even greater casualties, until after the election.

Those are not the only areas where we have lost control. Last Friday, Secretary Powell said:

> We don't have government control, or government control is inadequate, in Samarra, Ramadi, Erbil and a number of other places.

We continue to use so-called precision bombing in Iraq, even though our bombs cannot tell whether it is terrorists or innocent families inside the buildings they destroy.

What is helping to unite so many Iraqi people in hatred of America is this emerging sense that America is unwilling, not just unable, to rebuild their shattered country and provide for their basic needs. Far from sharing President Bush's unrealistic rosy view, they see close up that their hopes for peace and stability are receding every day.

Inevitably, more and more Iraqis believe that attacks on American forces are acceptable, even if they would not resort to violence themselves. For every mistake we make, for every innocent Iraqi child we accidentally kill in another bombing raid, the ranks of the insurgents climb, and so does their fanatical determination to stop at nothing to drive us out.

An Army reservist described the deteriorating situation this way:

> For every guerrilla we kill with a smart bomb, we kill many more innocent civilians and create rage and anger in the Iraqi community. This rage and anger translates into more recruits for the terrorists and less support for us.

The Iraqi people's anger is also fueled by the persistent blackouts, the power shortages, the lack of electricity, the destroyed infrastructure, the relentless violence, the massive lack of jobs and basic necessities and services.

By any reasonable standard, our policy is failing in Iraq. The President should level with the American people. He should take off his rose-colored glasses, understand the truth, and tell the truth. The American people and our soldiers in Iraq deserve answers to the questions they have about the war: Will President Bush come to the Presidential debate tomorrow prepared to answer the hard questions? Will he admit that we are on a catastrophic path in Iraq? Will he admit that we rushed to a $200 billion war with no plan to win the peace? Will he offer a concrete plan to correct our course?

We are steadily losing ground in the war. No amount of campaign spin can obscure those facts. We have to do better. November 2 is our chance. This President had his chance in Iraq. We deserve a new call, and I believe we will have it on November 2.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. SMITH). The Senator from Arizona has 14 minutes 15 seconds.

## IRAQ

Mr. KYL. Mr. President, I am going to respond to my colleague from Massachusetts. He has made a pretty vicious attack, I would say, on the President of the United States, contending that he has not leveled with the American people, that he has to begin telling the truth about what is going on in Iraq. These are very serious charges, and I would like to try to respond to them.

The Senator from Massachusetts began by a recitation of why, in his view, ''the outlook is so bleak,'' to use his quotation, and why he concluded that ''we're losing the war,'' another quotation from the Senator.

I see in the Senator's remarks, and others that I have heard recently, a steely determination to keep hopelessness alive. I do not think that should be the policy of the United States. The President has a much better vision about how to bring the war against militant Islam to a conclusion.

There were no constructive alternatives, as my colleagues will recall, from the comments of the Senator from Massachusetts. There were no ideas about how we could do better. It was just an attack on the President and an assertion that we are losing the war, the implications of which were left hanging.

When he said the President has this attitude of shooting first and asking questions later, then perhaps we need to recall that we have already been attacked. We did not shoot first. We were attacked viciously on 9/11 and it changed everything about our approach to the war against militant Islam.

Secondly, when the Senator from Massachusetts accuses the President of painting a rosy picture and then refers to the National Intelligence Estimate that predicted some pretty dire consequences, he forgets two things. First, President Bush has said repeatedly from the very beginning that this would be a very long and difficult conflict. He has never wavered from that. In fact, he has tried to inspire the American people to continue to persevere in this war.

One does not inspire people by wringing their hands and talking about how we are losing the war. Think about what kind of a message that sends to the troops and to the families who are sacrificing, to a mom who gets notice that her young son has been killed in Iraq: We are losing the war. It is hopeless. The outlook is bleak.

Well, what are we fighting for? What kind of a message does it send to our allies, who some people say they could convince to come into this conflict, we are losing the war, now please come in? That is not exactly going to persuade them to come into the conflict.

Finally, and most importantly, what kind of a message does it send to the enemy to suggest that they are winning and we are losing? Major political figures in this country argue that we are losing the war. It gives confidence to the enemies. That is exactly what they want to hear. Osama bin Laden has said we are the weak horse and he is the strong horse. If we convey that message to him, we increase the possibility that he will continue to think he can win and that he will continue to engage in this fight.

We need to break his will. He is testing our will and comments such as this are not helpful to challenging the American people to continue to persevere in this contest.

The question is about the American will, and I do not think the comments we heard from the Senator from Massachusetts are going to be effective in helping to sustain that will. I rather think the approach that Winston Churchill took in World War II accentuating the positive, yes, but not ignoring the negative and challenging the British people and the people of the Allies to persevere in that war is the right approach, and that is what President Bush has tried to do.

The Senator from Massachusetts has confused a couple of issues. First, he confuses violence in Iraq with less security at home. I do not think we are less secure at home because there is violence in Iraq. In fact, one of the reasons we have not been attacked at home for over 3 years is because we have taken the fight to the enemy and we have largely been successful. We have not lost a battle in this war.

There are battles yet to be fought, and the enemy attacks us with guerilla tactics, but we can persevere and win militarily. So I do not think we should confuse the fact that there is violence in Iraq and therefore conclude we are less secure at home. That is simply not true.

Secondly, the Senator from Massachusetts alleges that there was no relationship, no connection, between the terrorists and the Saddam Hussein regime. I want to try to debunk this myth right now, so let me quote from the CIA, from the 9/11 Commission, and from George Tenet's assessment since we are going to be quoting the National Intelligence Estimate. This is what the head of the CIA, George Tenet, said:

> Our understanding of the relationship between Iraq and al-Qaida is evolving and is based on sources of varying reliability. Some of the information we have received comes from detainees, including some of high rank.
>
> We have solid reporting of senior level contacts between Iraq and al-Qaida going back a decade.

No relationship? According to the CIA, not true.

Continuing to quote:

Credible information indicates that Iraq and al-Qaida have discussed safe haven and reciprocal nonaggression.

Since Operation Enduring Freedom, we have solid evidence of the presence in Iraq of al-Qaida members, including some that have been in Baghdad.

We have credible reporting that al-Qaida leaders sought contacts in Iraq who could help them acquire WMD capabilities. The reporting also stated that Iraq has provided training to al-Qaida members in the areas of poisons and gases and making conventional bombs.

Iraq's increasing support to extremist Palestinians, coupled with growing indications of a relationship with al-Qaida, suggest that Baghdad's links to terrorists will increase, even absent U.S. military action.

No relationship? No contacts? No connection? Read the intelligence reports.

What did the 9/11 Commission say? Quoting from Thomas Kean, cochair of the 9/11 Commission:

There was no question in our minds that there was a relationship between Iraq and Al Qaeda.

Let us get the facts straight. If we are going to come to the Senate floor and charge the President of the United States with misinforming the American people, we need not misinform them ourselves.

Quoting further from the 9/11 Commission report:

With the Sudanese regime acting as an intermediary, Bin Ladin himself met with senior Iraqi intelligence officers in Khartoum in late 1994 or early 1995. Bin Ladin is said to have asked for space to establish training camps, as well as assistance in procuring weapons, but there is no evidence that Iraq responded to this request . . . [but] the ensuing years saw additional efforts to establish connections.

That is from page 61 of the report. From page 66:

In March 1998, after Bin Ladin's public fatwa against the United States, two Al Qaeda members reportedly went to Iraq to meet with Iraqi intelligence. In July, an Iraqi delegation traveled to Afghanistan to meet first with the Taliban and then with Bin Ladin. Sources reported that one, or perhaps both, of these meetings was apparently arranged through Bin Ladin's Egyptian deputy, Zawahiri, who had ties of his own to the Iraqis.

From page 66:

Similar meetings between Iraqi officials and Bin Ladin or his aides may have occurred in 1999 during a period of some reported strains with the Taliban. According to the reporting, Iraqi officials offered Bin Ladin a safe haven in Iraq. Bin Ladin declined, apparently judging that his circumstance in Afghanistan remained more favorable than the Iraqi alternative. The reports describe friendly contacts and indicates some common themes in both sides' hatred of the United States. But to date we have seen no evidence that these or the earlier contacts ever developed into a collaborative operational relationship. . . .

That is the critical distinction. We have to be careful of our language, especially when we are accusing the President of the United States of misleading the American people. Our language matters. The President never alleged an operational link or that Saddam Hussein helped to plan the 9/11 attack on the United States, but there is plenty of evidence of connections between bin Laden, al-Qaida, other terrorists and Iraq and Saddam Hussein.

The Intelligence Committee report in July of this year reported:

[F]rom 1996 to 2003, the Iraqi Intelligence Service ''focused its terrorist activities on Western interests, particularly against the U.S. and Israel.

They go on to quote the letter from George Tenet that I quoted before.

[A]ccording to a CIA report called Iraqi Support for Terrorism, ''the general pattern that emerges is one of al Qaeda's enduring interest in acquiring chemical, biological, radiological and nuclear (CBRN) expertise from Iraq.''

This is exactly what Senator MCCAIN talked about a few weeks ago, what the President has talked about, what the Vice President has talked about, our concern of this relationship that would some day, if we did not act against Iraq, blossom into fullblooded support, full-blown support from Iraq to al-Qaida.

Finally:

[T]he Iraqi regime ''certainly'' had knowledge that Abu Musab al Zarqawi—described in Iraqi Support for Terrorism as ''a senior al Qaeda terrorist planner''—was operating in Baghdad and northern Iraq.

I ask unanimous consent that a New York Times article of June 25, 2004, which further makes this point, be printed in the RECORD.

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

[From the New York Times, June 25, 2004]

IRAQIS, SEEKING FOES OF SAUDIS, CONTACTED BIN LADEN, FILE SAYS

(By Thom Shanker)

Contacts between Iraqi intelligence agents and Osama bin Laden when he was in Sudan in the mid 1990's were part of a broad effort by Baghdad to work with organizations opposing the Saudi ruling family, according to a newly disclosed document obtained by the Americans in Iraq.

American officials described the document as an internal report by the Iraqi intelligence service detailing efforts to seek cooperation with several Saudi opposition groups, including Mr. bin Laden's organization, before Al Qaeda had become a full-fledged terrorist organization. He was based in Sudan from 1992 to 1996, when that country forced him to leave and he took refuge in Afghanistan.

The document states that Iraq agreed to rebroadcast anti-Saudi propaganda, and that a request from Mr. bin Laden to begin joint operations against foreign forces in Saudi Arabia went unanswered. There is no further indication of collaboration.

Last week, the independent commission investigating the Sept. 11 attacks addressed the known contacts between Iraq and Al Qaeda, which have been cited by the White House as evidence of a close relationship between the two.

The commission concluded that the contacts had not demonstrated ''a collaborative relationship'' between Iraq and Al Qaeda. The Bush administration responded that there was considerable evidence of ties.

The new document, which appears to have circulated only since April, was provided to The New York Times several weeks ago, before the commission's report was released. Since obtaining the document, The Times has interviewed several military, intelligence and United States government officials in Washington and Baghdad to determine that the government considered it authentic.

The Americans confirmed that they had obtained the document from the Iraqi National Congress, as part of a trove that the group gathered after the fall of Saddam Hussein's government last year. The Defense Intelligence Agency paid the Iraqi National Congress for documents and other information until recently, when the group and its leader, Ahmad Chalabi, fell out of favor in Washington.

Some of the intelligence provided by the group is now wholly discredited, although officials have called some of the documents it helped to obtain useful.

A translation of the new Iraqi document was reviewed by a Pentagon working group in the spring, officials said. It included senior analysts from the military's Joint Staff, the Defense Intelligence Agency and a joint intelligence task force that specialized in counterterrorism issues, they said.

The task force concluded that the document ''appeared authentic,'' and that it ''corroborates and expands on previous reporting'' about contacts between Iraqi intelligence and Mr. bin Laden in Sudan, according to the task force's analysis.

It is not known whether some on the task force held dissenting opinions about the document's veracity.

At the time of the contacts described in the Iraqi document, Mr. bin Laden was little known beyond the world of national security experts. It is now thought that his associates bombed a hotel in Yemen used by American troops bound for Somalia in 1992. Intelligence officials also believe he played a role in training Somali fighters who battled Army Rangers and Special Operations forces in Mogadishu during the ''Black Hawk Down'' battle of 1993.

Iraq during that period was struggling with its defeat by American-led forces in the Persian Gulf war of 1991, when American troops used Saudi Arabia as the base for expelling Iraqi invaders from Kuwait.

The document details a time before any of the spectacular anti-American terrorist strikes attributed to Al Qaeda: the two American Embassy bombings in East Africa in 1998, the strike on the destroyer Cole in Yemeni waters in 2000, and the Sept. 11 attacks.

The document, which asserts that Mr. bin Laden ''was approached by our side,'' states that Mr. bin Laden previously ''had some reservations about being labeled an Iraqi operative,'' but was now willing to meet in Sudan, and that ''presidential approval'' was granted to the Iraqi security service to proceed.

At the meeting, Mr. bin Laden requested that sermons of an anti-Saudi cleric be rebroadcast in Iraq. That request, the document states, was approved by Baghdad.

Mr. bin Laden ''also requested joint operations against foreign forces'' based in Saudi Arabia, where the American presence has been a rallying cry for Islamic militants who oppose American troops in the land of the Muslim pilgrimage sites of Mecca and Medina.

But the document contains no statement of response by the Iraqi leadership under Mr. Hussein to the request for joint operations, and there is no indication of discussions about attacks on the United States or the use of unconventional weapons.

The document is of interest to American officials as a detailed, if limited, snapshot of communications between Iraqi intelligence and Mr. bin Laden, but this view ends with Mr. bin Laden's departure from Sudan. At that point, Iraqi intelligence officers began ''seeking other channels through which to handle the relationship, in light of his current location,'' the document states.

Members of the Pentagon task force that reviewed the document said it described no formal alliance being reached between Mr. bin Laden and Iraqi intelligence. The Iraqi document itself states that ''cooperation between the two organizations should be allowed to develop freely through discussion and agreement.''

The heated public debate over links between Mr. bin Laden and the Hussein government fall basically into three categories: the extent of communications and contacts between the two, the level of actual cooperation, and any specific collaboration in the Sept. 11 attacks.

The document provides evidence of communications between Mr. bin Laden and Iraqi intelligence, similar to that described in the Sept. 11 staff report released last week.

''Bin Laden also explored possible cooperation with Iraq during his time in Sudan, despite his opposition to Hussein's secular regime,'' the Sept. 11 commission report stated.

The Sudanese government, the commission report added, ''arranged for contacts between Iraq and Al Qaeda.''

''A senior Iraqi intelligence officer reportedly made three visits to Sudan,'' it said, ''finally meeting bin Laden in 1994. Bin Laden is said to have requested space to establish training camps, as well as assistance in procuring weapons, but Iraq apparently never responded.''

The Sept. 11 commission statement said there were reports of further contacts with Iraqi intelligence in Afghanistan after Mr. bin Laden's departure from Sudan, ''but they do not appear to have resulted in a collaborative relationship,'' it added.

After the Sept. 11 commission released its staff reports last week, President Bush and Vice President Dick Cheney said they remained convinced that Mr. Hussein's government had a long history of ties to Al Qaeda.

''This administration never said that the 9/11 attacks were orchestrated between Saddam and Al Qaeda,'' Mr. Bush said. ''We did say there were numerous contacts between Saddam Hussein and Al Qaeda. For example, Iraqi intelligence officers met with bin Laden, the head of Al Qaeda, in the Sudan. There's numerous contacts between the two.''

It is not clear whether the commission knew of this document. After its report was released, Mr. Cheney said he might have been privy to more information than the commission had; it is not known whether any further information has changed hands.

A spokesman for the Sept. 11 commission declined to say whether it had seen the Iraqi document, saying its policy was not to discuss its sources.

The Iraqi document states that Mr. bin Laden's organization in Sudan was called ''The Advice and Reform Commission.'' The Iraqis were cued to make their approach to Mr. bin Laden in 1994 after a Sudanese official visited Uday Hussein, the leader's son, as well as the director of Iraqi intelligence, and indicated that Mr. bin Laden was willing to meet in Sudan.

A former director of operations for Iraqi intelligence Directorate 4 met with Mr. bin Laden on Feb. 19 1995, the document states.

Mr. KYL. I note, concluding with this point, that Abdul Yasim and Abu Nidal were harbored in Iraq. The Taliban did not directly involve itself in 9/11 or have weapons of mass destruction either, but it harbored people like this and that is one reason we went after the Taliban and Saddam Hussein's regime in Iraq.

With regard to the connections between Iraq and al-Qaida, the case is very clear that they were there and the President stands correct, and I hope the Senator from Massachusetts would stand corrected.

Finally, as to the suggestion that Iraq was a diversion from succeeding in Afghanistan, that we have not finished the job there, we were very successful in defeating the Taliban and killing a lot of al-Qaida and capturing a lot of al-Qaida in Afghanistan, and in establishing a regime there which will be holding elections. Karzai made it very clear when he came to this country and expressed his appreciation, just as did Prime Minister Allawi of Iraq, to American forces for helping to provide the Afghanis with enough freedom to control their own future. I think there is confusion that the only al-Qaida are on the border between Afghan and Pakistan, and since we have not captured every single one of them, including Osama bin Laden, therefore our activities in Iraq are responsible for this fact. There has been no evidence of that. As a matter of fact, our military commanders make the point it is not true, that Iraq was not a diversion from anything we had to do in Afghanistan where we were very effective and successful.

To those who convey this sense of panic, that all is going bad, the opposite of that is not those of us who support the President's policy saying everything is rosy. I do not know that anybody has ever used that phrase. If they have, I would like to see it. The President has said repeatedly that this is a long and difficult war and it is going to require a great deal of perseverance and commitment by the American people. But as contrasted by those who create the sense of panic, the President has a vision and the President's commanders have a strategy. When I saw General Abizaid on television last Sunday, he didn't paint a rosy picture. He painted a very realistic assessment. But he also portrayed a calm confidence that if we can persevere we can prevail.

That is what he asked of the American people, to allow the military commanders as well as the Commander in Chief to carry out the vision to defeat the militant Islamic terrorists wherever they are. As I said, they are not only in Afghanistan; they are all over the world including primarily in the Middle East. That is why this war has many fronts. It is not just Afghanistan. We fought simultaneously to try to gain support from Pakistan, Saudi Arabia, the Libyan regime, and from Syria. We did what we did in Afghanistan. We have done what we have done in Iraq. There are still some places to go, but we have also been in Yemen and Sudan, and so on.

The bottom line here is you can't isolate one place in the world and say we have to do that first and win every possible goal there before we can do anything else anywhere else. The President has made it clear that by going to one of the chief sources of terrorism, namely Iraq, we can help to win this war.

The fact that there was such a connection between the terrorists—between al-Qaida and the Iraqi regime—is I think validated by the fact that they have been able to so successfully continue to attack Americans and American forces in Iraq.

Let's consider that the military commanders just might know what they are talking about, No. 1. No. 2, it does no good to wring our hands and paint a picture of panic. Realistic assessments, absolutely; truth to the American people, absolutely; but leadership that presents a vision and a strategy for winning the wider war on terrorism, that is what the President has provided. That is why I am very proud to support President Bush's efforts in this regard.3

## RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, leadership time is reserved.

## NATIONAL INTELLIGENCE REFORM ACT OF 2004

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 2845, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 2845) to reform the intelligence community and the intelligence and intelligence-related activities of the U.S. Government, and for other purposes.

Pending:

Wyden Amendment No. 3704, to establish an Independent National Security Classification Board in the executive branch.

Collins Amendment No. 3705, to provide for homeland security grant coordination and simplification.

Specter Amendment No. 3706, to provide the National Intelligence Director with the authority to supervise, direct, and control all elements of the intelligence community performing national intelligence missions.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Ms. COLLINS. Mr. President, the debate now will resume on the amendment offered by the Senator from Pennsylvania. As discussed last night, we have an informal agreement that Senator ROBERTS would be recognized for—is it 25 minutes, I ask Senator ROBERTS?

Mr. ROBERTS. I thought the agreement was 30.

Mr. REID. Mr. President, I could not hear the Senator from Maine. She said there had been an order that the Senator be recognized?

Ms. COLLINS. Mr. President, if I can respond to the Democratic leader's inquiry, there was an informal discussion

last night. There was not an order entered, to the best of my knowledge, but an informal agreement that Senator ROBERTS would be recognized, and it was either 25 or 30 minutes. I am uncertain.

Mr. ROBERTS. If the distinguished chairman will yield, I am not sure of the timeframe. I think my remarks will be approximately 30 minutes. I hope they will not go over 30 minutes. But that would be my goal.

Mr. REID. My only inquiry here is, Senator HARKIN wishes to speak for 10 minutes sometime. We recognize we should have gotten to the bill earlier than we have, but we didn't, and now with the dialog that has gone on Senator HARKIN believes he needs to speak, so we need to somehow figure a way to allow him to do that.

The Senator from Maine has the floor. We understand that. But is there some way between the two managers we can get Senator HARKIN some time here this morning? Otherwise he is just going to hang around and cause trouble.

Ms. COLLINS. Mr. President, if I could complete my sequencing here. After Senator ROBERTS, Senator LEVIN had asked to be recognized on the Specter amendment. They were both here last night, so I want to respect their requests as well.

I wonder if we could arrange for Senator HARKIN to speak after the first series of votes today, for 10 minutes.

Mr. REID. That is fine. After the first vote today I ask unanimous consent Senator HARKIN be recognized.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Senator STEVENS to follow Senator HARKIN.

Ms. COLLINS. As part of that sequencing, it would be 10 minutes for Senator HARKIN and 10 minutes for Senator STEVENS—oh, I am sorry. Senator STEVENS is on the bill?

Mr. REID. It would be 15 minutes for Stevens, 15 for Harkin? Or unlimited for Stevens?

Ms. COLLINS. Senator STEVENS is going to be speaking on the bill so he has asked for an unlimited amount of time.

Mr. REID. We understand Senator STEVENS, being the President pro tempore of the Senate, can speak as long as he wants. Again I repeat, after the first vote Senator HARKIN will be recognized for 15 minutes, and then Senator STEVENS will be recognized.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Kansas is recognized.

AMENDMENT NO. 3706

Mr. ROBERTS. Mr. President, I rise in support of the Specter amendment. Before I begin, I would like to commend the managers of the bill, Senators COLLINS and LIEBERMAN, for their extraordinary patience and their hard work as we continue working through this process. Senators COLLINS and LIEBERMAN are very prominent and hard-working Senators. They have been given a very tough assignment and a limited timeframe in which to complete it. Nevertheless, they have produced a bill which is a step in the right direction.

As chairman of the Senate Intelligence Committee, I look forward to working with the Senators who serve on the committee of assignment by the leadership as the Senate attempts to make intelligence reform a reality.

Simply put, the Specter amendment would give the national intelligence director, or what we call now the NID, the authority to direct and supervise and control our national intelligence collection agencies. In doing so, it will create a clear chain of command that will leave no doubt in anybody's mind that the national intelligence director is in charge and is accountable.

There is no rush to judgment on this issue. The debate in which we are currently engaged is the same debate that has been going on for decades, centered on how to grant increased authority to the Director of Central Intelligence, or a new national intelligence director, while leaving undisturbed the intelligence community's structural status quo. Time and time again, those who have struggled with this conundrum have found we simply can't get there from here under that context. In other words, I believe it takes significant organizational change to overcome the inherent conflicts in the current structure of our national intelligence community.

True empowerment requires a national intelligence director with both budget authority and the authority to direct and control the activities of the intelligence collection agencies. One without the other will once again leave us with an intelligence head who can neither succeed nor be held fully accountable.

Let me state that the bill reported by the Governmental Affairs Committee does address the question of budget authority very effectively. It is significant and well contained. The bill leaves unaddressed, however, the issue of the national intelligence director's authority to direct, to supervise, and control the activities of our national intelligence collection agencies.

In short, the bill, in my opinion, preserves divided loyalties inherent in the current structure. Why is it so difficult to give this new NID direct control over all of the intelligence community agencies? It is no secret. The issue centers on the fact that the National Reconnaissance Office, which designs and acquires our spy satellites, the National Security Agency, which collects our signal intelligence, and the National Geospatial Intelligence Agency, which processes and disseminates our satellite imagery, all fall under the direct control of the Secretary of Defense.

These agencies, while essential to the collection of national intelligence, have also been deemed essential to the Pentagon's ability to fight and to win wars. In essence, these agencies serve two masters: The head of the intelligence community and the Secretary of Defense. This tension has existed for decades, and it continues today. As long as the Secretary of Defense directs the day-to-day activities of these agencies, the new national intelligence director will continue to struggle with a structure that undermines his ability to succeed as the head of the intelligence community.

It appears to me that under today's bill the national intelligence director's authority concerning collection will be about the same as the DCI's has been for over 50 years. I do not mean to be a pessimist, but history has shown in practice that these authorities to ''establish requirements,'' ''manage the collection task,'' and ''resolve the conflicts'' have limited ability when an agency works with the Secretary of Defense and not for the head of the intelligence community.

Why has it been so difficult to streamline the chain of command in the intelligence community? Because when the Defense Department comes up on the radar screen and announces to Congress and the media that its ability to defend America will be undermined if it loses direct control over its intelligence agencies, Members of Congress rightfully pause and they certainly take note. This is especially true today when American forces are engaged in combat. This, however, should not lead to what we call paralysis.

During this debate, we have heard a great deal about support to our dedicated, brave men and women in uniform, i.e., the warfighters. Many of my colleagues have argued and will continue to argue that the national intelligence director must not be allowed to direct and supervise the control of activities of our national intelligence collection agencies. In their view, granting such an authority would undermine the Secretary of Defense's ability to fight and win wars. For this to be true, the national intelligence director would have to deny our military commanders the information they need to wage war. I cannot conceive of any circumstance where that would be the case.

I am a member of the Armed Services Committee. I am a former Marine officer. I would not sanction any legislation that I thought would limit the ability of our troops to fight and to win wars. I recognize the special requirements of the Department of Defense. As chairman of the Intelligence Committee, I also know that the Department of Defense is only one of the major consumers of intelligence. Important, yes; major, yes; but one.

I often hear people referring to the Department of Defense as the principal consumer of intelligence. While the Department is a significant and important consumer of intelligence, we need

to remember one thing: The principal consumers of intelligence are the President of the United States, the Congress, and the National Security Council. They are the principal consumers. The Department of Defense is a major consumer.

In time, the Department of Homeland Security is likely to become a voracious consumer of intelligence, perhaps on a par with the Department of Defense.

I do not believe the defense of the homeland is any less important than prosecuting the war. Consequently it does not make sense to have 80 percent of our intelligence collection apparatus controlled by one consumer, and that is the Department of Defense.

If we give the national intelligence director the authority to manage all of the national collection agencies, that will ensure one office is responsible and accountable for meeting the intelligence requirements of all consumers including, of course, that of the Department of Defense. If any Cabinet member believes their intelligence requirements are not being met, he or she can address the issues to the national intelligence director. If a Cabinet member does not agree with NID's decision, they can take it up with the President of the United States.

I also note that in testimony before Congress, the directors of two of the Pentagon's intelligence collection agencies—the National Security Agency and the National Geospatial Intelligence Agency—stated that having their agencies transferred to the control of a national intelligence director would not degrade their level of support to the military.

Let me repeat that. The directors of two of the Pentagon's intelligence collection agencies—the National Security Agency and the National Geospatial Intelligence Agency—stated that having their agencies transferred to the control of a national intelligence director would not degrade their level of support to the military.

Additionally, some have argued that giving the national intelligence director line control of agencies with uniformed military personnel would be complicated. There will certainly be some issues to be resolved, to be sure. But the Department of Defense regularly details military personnel to agencies and offices outside of the Department of Defense. We would not be breaking new ground here. We have had civilian control of the military since the founding of this Nation, and I don't see how civilian control by a national intelligence director is qualitatively different than civilian control by the Secretary of Defense. They both work for the President.

There has been a lot of talk about that fact in regard to meetings we have had with people in uniform and the Secretary of Defense and a certain Senator asking, How would you feel if your budget was controlled by somebody who didn't wear a uniform? Well, the Secretary of Defense doesn't wear a uniform. When the military appears before the Congress, they don't wear a uniform. Neither does the Secretary of Army, Navy, or Air Force wear a uniform.

Let me detail a few examples to illustrate why direct control is so important to the success of the national intelligence director.

As recently as last week—I would like for Members to pay attention to this—as recently as last week, the Senate Intelligence Committee received a very troubling briefing in closed session that clearly demonstrated that even on matters relating to the terrorist threat to our homeland, today, now, the terrorist threat that we face, the intelligence agencies still stubbornly refuse to adequately share information. Why are these agencies still not sharing? Some progress has been made. But why are they still not sharing? Is it because the DCI doesn't have adequate budget authority? No. They don't share it because they work for 15 different bosses and no one holds them accountable for information sharing. The national intelligence director can cajole, he can plead, he can consult all he wants; he can promulgate policies and guidelines all day long. He can create grand, trusted information networks. But without a national intelligence director with direct control, there will be no one to force adequate information sharing within the intelligence community.

Let us take another example.

We have all heard former DCI Tenet's now famous declaration of war against al-Qaida in 1998. Mr. Tenet ordered that no resource was to be spared in this critical effort. He declared war as a result of Osama bin Laden issuing fatwas to kill Americans.

What happened as a result of this bold order? Not much. The National Security Agency went its own way, saying: Thank you, Mr. DCI, for your interest in national security, but we are going to retool for a threat that has nothing to do with terrorism.

What would have happened if Mr. Tenet had the authorities granted to the national intelligence director under the Collins-Lieberman bill when he made his 1998 declaration? He might have said: We are at war, and the NSA will see that reflected in the budget you will receive in the next year or so, assuming Congress does not make any changes to it. That is budget authority. That is the crowbar he would use in terms of influence. However, with the authorities to direct, supervise, and control, which are provided in the Specter amendment, Mr. Tenet would have been able to order the NSA to stop retooling for the other threat, get to work that day, focus their efforts on al-Qaida. In the 21st century, threats evolve too quickly to wait a year or so for the national intelligence director's budget change to have any effect. The NID must have direct control in order to make immediate changes.

The bill before the Senate today is a significant step in the right direction. Credit goes to Senator COLLINS and Senator LIEBERMAN. There are many good provisions in the bill which should improve the intelligence community, but it is missing something very important—a clear chain of command and accountability.

As the examples I have cited demonstrate, a clear chain of command and accountability that comes with it are essential to real and lasting reform. If we do not make the hard choices now, I fear after yet another series of intelligence failures—and Lord knows I do not want to sit as chairman of the Intelligence Committee and have any more ''Oh my God'' hearings in regard to past tragedies from Khobar Towers to embassy bombings to the Khartoum chemical plant to the failure to even try to come as close as possible to predicting the India nuclear blast, Somalia, the USS *Cole*, and obviously September 11. We do not want to go back down that road.

I fear the Senate Intelligence Committee will be right back in its hearing room listening to the newly minted national intelligence director testify while he enjoys a great deal of budget authority he still lacks the real authority to perform the day-to-day operations of our intelligence agencies and therefore lacks ability to lead as we expect and as he must. I urge my colleagues to support the Specter amendment so there is no doubt in anyone's mind that the national intelligence director is in charge and is accountable.

I will take a few more moments to comment on some of the debate I have heard concerning this amendment. This is not a new debate. What I heard in the Senate yesterday and today represents an age-old tension that has existed since the intelligence community was created.

Ms. COLLINS. Would the Senator yield briefly for a unanimous consent request?

Mr. ROBERTS. Certainly, I would be more than happy, in the middle of shining the light of truth into darkness, to yield for a unanimous consent request.

Ms. COLLINS. I apologize for interrupting the Senator. Mr. President, I ask unanimous consent that the only amendments remaining to the bill other than the pending amendments be the two lists I now send to the desk; provided further that they be subject to second degrees that are related to the subject matter of the first degree; further, that all other provisions governing the consideration of this bill remain in effect.

Mr. SPECTER. Reserving the right to object, would the distinguished chairwoman repeat that unanimous consent request?

Mr. REID. Mr. President, basically what we have done, we now have a finite list of amendments. The two cloakrooms have hotlined every Senator, and we have, I am sorry to say, more than 200 amendments, but that is

the finite list, and the Senator from Pennsylvania is on the list.

Mr. SPECTER. Parliamentary inquiry: For how many amendments am I on the list?

Mr. REID. Seven.

Ms. COLLINS. Seven plus the pending amendment.

Mr. SPECTER. I thank the Chair.

Mr. ROBERTS. If the Senator will yield, may I ask if the 21 amendments I have drafted, amendments that would improve the nature of the bill, are they included in that list?

Ms. COLLINS. They are indeed.

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

Ms. COLLINS. Thank you, Mr. President.

I thank the Senator.

Mr. REID. Mr. President, if the Senator will allow me to make a statement as to what we are going to do here for a minute, I will be very brief.

The two leaders have directed the two managers of the bill that the next step will be to get a filing deadline. Hopefully that will be in the next few hours. We may not be able to do it until tomorrow, but we are working as quickly as we can to make sure amendments people have submitted will be drafted. We are moving along as quickly as we can.

The list of amendments is as follows:

Shelby, Domestic Preparedness; Shelby, Domestic Preparedness; Shelby, NID; Ensign, Relevant; Ensign, Relevant; Inhofe, Relevant; Inhofe, Relevant; Inhofe, Relevant; Inhofe, Relevant; Inhofe, Relevant; Inhofe, Relevant; Lugar, Relevant; Lugar, Relevant; Voinovich, Presidential Appointments; Cornyn, Human Smuggling; Cornyn, State and Local Law Enforcement; Cornyn, Drivers Licenses.

Snowe, IG; Snowe, Red Teams; Snowe, NIE Reports; Snowe, NCTC Reports; Snowe, Relevant; Snowe, Relevant; Allard, Marshall Imagery; Allard, Personnel Authorities; Allard, Personnel Authorities; Allard, Geospatial Informatrion; Cornyn, Cyber Security; Grassley, Money Laundering/Terror Financing; Grassley, IG/Whistleblower Protection; Grassley, Visas; Grassley, Visas; Grassley, Related; Grassley, Related; Grassley, Related.

Hutchison, Center for Alternative Intel. Analysis; Hutchison, Relevant; McConnell, Related; McConnell, Related; McConnell, Related; McConnell, Related; Domenici, Natl. Critical Infrastructure Center; Domenici, Border Surveillance; Domenici, WMD Intel. Center; Sessions, Relevant; Sessions, Relevant; Sessions, Relevant; Sessions, Relevant; Sessions, Relevant; Sessions, Relevant; Sessions, Relevant; Sessions, Relevant; Sessions, Relevant.

Kyl, Relevant; Kyl, Relevant; Kyl, Relevant; Kyl, Relevant; Kyl, Relevant; Kyl, Relevant; Chambliss, Border Security; Chambliss, Document Security; Chambliss, Relevant; Chambliss, Relevant; Chambliss, Military Intel.; McCain, Relevant; McCain, Relevant; McCain, Relevant; McCain, Relevant; McCain, Relevant; McCain, Relevant; McCain, Relevant; McCain, Relevant; McCain, Relevant; McCain, Relevant.

Roberts, NID Agency Control; Roberts, Definitions; Roberts, IC/NFIP Programs; Roberts, IC/NFIP Programs; Roberts, Non-NFIP DIA Programs; Roberts, Intel-Sharing; Roberts, NIDs Authorities; Roberts, NIA; Roberts, NID; Roberts, Sect. 504 of Natl. Sec. Act of 1947; Roberts, NID Control of CIA; Roberts, Reprogramming and Transfers; Roberts, New Positions Subject to NID Concurrence; Roberts, NID Authority; Roberts, NID Authority; Roberts, Analytic Review Unit; Roberts, GC Provision; Roberts, IG Provision; Roberts, NCTC and NIC Responsibilities; Roberts, SecDef Responsibilities to NID for NIP; Roberts, NID Authority; Roberts, NID Authority; Roberts, NID; Roberts, Relevant; Roberts, Relevant.

Hatch, Punishment for Stowaways; Hatch, FBI Translators; Hatch, Expedited Terrorist Removal; Warner, Relevant; Warner, Relevant; Warner, Relevant; Warner, Relevant; Warner, Relevant; Warner, Relevant; Warner Relevant; Warner, Relevant; Warner, Relevant; Warner, Relevant; Warner, Relevant; Warner, Relevant; Warner, Relevant; Warner, Relevant; Warner, Relevant.

Stevens, Relevant; Stevens, Relevant; Stevens, Relevant; Stevens, Relevant; Stevens, Relevant; Stevens, Relevant; Stevens, Relevant; Stevens, Relevant; Stevens, Relevant; Stevens, Relevant; Stevens, Relevant; Stevens, Relevant; Stevens, Relevant; Stevens, Relevant; Stevens Relevant; Stevens, Relevant; Stevens, Relevant; Stevens, Relevant; Gregg, FBI; Gregg, Relevant; Coleman, Information Network; Coleman, Strike; Collins, Relevant; Collins, Relevant; Collins, Relevant.

Talent, Relevant; Burns, Federal Flight Deck Officer Prog.; Burns, Relevant; Burns, Relevant; Specter, Relevant; Specter, Relevant; Specter, Relevant; Specter, Relevant; Specter, Relevant; Specter, Relevant; Specter, Relevant; Specter, Relevant; Specter, Relevant; Frist, Relevant; Frist, Relevant; Frist, Relevant; Frist, Relevant; Frist, Relevant; Frist, Relevant to any on list; Frist, Relevant to any on list; Frist, Relevant to any on list; Frist, Relevant to any on list; Frist, Relevant to any on list.

Collins, Relevant; Collins, Relevant; Collins, Relevant; Collins, Relevant; Collins, Relevant to any on list; Collins, Relevant to any on list; Collins, Relevant to any on list; Collins, Relevant to any on list; Collins, Relevant to any on list; Collins, Managers' amdendments; Voinovich, Ethics in government.

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Akaka, 1. Relevant; 2. Relevant; 3. Relevant; 4. Relevant.

Baucus, 1. Relevant.

Bayh, 1. Congressional Reform.

Biden, 1. Relevant; 2. Relevant.

Bingaman, 1. Terrorism; 2. Lab Employees; 3. Chief Science Officer; 4. Relevant.

Boxer, 1. Relevant; 2. Relevant; 3. Relevant.

Byrd, 1. Relevant; 2. Relevant; 3. Relevant; 4. Relevant.

Cantwell, 1. Biometric Visas.

Carper, 1. Rail Security.

Clinton, 1. Relevant; 2. Relevant; 3. 2nd degree to Collins Formula Grants.

Conrad, 1. Relevant; 2. Relevant; 3. Relevant.

Corzine, 1. Relevant; 2. Relevant; 3. Relevant.

Daschle, 1. Related; 2. Related; 3. Related to any on the list; 4. Related to any on the list.

Dayton, 1. NID Communication with Congress.

Dorgan, 1. Nano-technology.

Durbin, 1. Civil liberties; 2. Civil liberties; 3. Foreign language, Science, technology education.

Feingold, 1. Information sharing; 2. Relevant.

Feinstein, 1. State and Local; 2. DoD Tactical; 3. National Intel University; 4. Clarify sub-official role; 5. Colocation; 6. FBI General; 7. Reserve Corps; 8. Related; 9. Related.

Graham, 1. NIC; 2. Education and Training; 3. Relevant; 4. Relevant.

Jeffords, 1. Interoperability; 2. Preparedness; 3. Security; 4. Critical Infrastructure.

Harkin, 1. Civil Liberties; 2. Civil Liberties; 3. Related.

Hollings, 1. MTSA deadlines.

Inouye, 1. TSA.

Lautenberg, 1. NID Five year term (renewable); 2. Close Business with Terrorists Loophole; 3. Risked Based Homeland Security; 4. Port Security; 5. Rail Security; 6. Saudi Arabia.

Leahy, 1. Relevant; 2. Relevant; 3. Translators Report Act; 4. FISA Oversight; 5. FBI Reform Act; 6. USA Patriots Restoration Act; 7. Whistle Blower Protections; 8. Information Sharing Enhancement; 9. Civil Liberties Review Board Improvements; 10. Passenger Screening/Watch Lists; 11. Passenger ID verification.

Levin, 1. Intel Requirements; 2. Alternative Intel; 3. Critical Infrastructure Protection; 4. Budget Authority; 5. Relevant; 6. Relevant.

Lieberman 1. Relevant; 2. Relevant; 3. Relevant; 4. Relevant to any on list; 5. Relevant; 6. Relevant; 7. Relevant to any on list; 8. Relevant to any on list; 9. Relevant to any on list; 10. Relevant to any on list.

Hollings, 1. Creating National Intelligence Coordinator.

Nelson (FL), 1. Relevant; 2. Relevant; 3. Relevant.

Reed, 1. LNG; 2. Transit Security.

Reid, 1. Relevant; 2. Relevant.

Rockefeller, 1. Relevant; 2. Relevant; 3. Relevant to any on the list; 4. Relevant to any on the list.

Sarbanes, 1. Civil liberties.

Schumer, 1. Signal Corps; 2. Biometric Screening; 3. Port Security; 4. Cyber Security; 5. Foreign Intelligence Surveillance Act; 6. Saudi Arabia; 7. Truck Security; 8. Rail Security; 9. Relevant; 10. Relevant; 11. Relevant.

Wyden, 1. Independent Security Classification Board (S.A.# 3704); 2. Databases.

Mr. ROBERTS. What I heard in the Senate yesterday in regard to comments on this debate represents an age-old tension that has existed since the intelligence community was created.

Members heard numerous quotes from statutes such as title 10, title 50. The heart of this debate, however, is whether we will give an individual unambiguous control of intelligence activities in the United States. We can quote from the United States Code all day. The point is the laws could be changed. That is what we do in the Congress. The debate today is about what the law should be, not what the law is. Arguing the status quo is convenient, but it is not always correct.

This bill gives the new national intelligence director one very good tool. It is called budget authority. It does not give him control. The Specter amendment gives the national intelligence director control, which means accountability and real reform.

As we have debated this issue, I have heard many Members cite the words and reported opinions of the 9/11 Commission. The 9/11 Commission has done a great service to this country, but the Commissioners themselves have made it clear they do not have all the answers.

The 9/11 Commission did produce an excellent study of the failures leading

up to the attacks of September 11. The Governmental Affairs Committee bill is faithful to the lessons the Commission drew from its work. It is an excellent report. But I remind my colleagues that the Commission's report was based on a single case study—the period leading up to the attacks of September 11. However, a broader historical examination of our intelligence community leads many—including this Senator—to the important conclusion that over the last 50 years, the intelligence community has drifted due to the lack of or absence of a clear chain of command and the lack of accountability that a clear chain of command can bring. That clear chain of command requires giving the national intelligence director the authority to direct, to control, and to supervise our national collection agencies.

Our job is not to take the work of the 9/11 Commission as a sacred text which is not to be questioned or altered; our job is to take their work and integrate it with the lessons learned over the 50-plus years of history of our intelligence community and nearly 30 years of congressional oversight by the Intelligence Committee. As the Senator from Pennsylvania has pointed out, his amendment incorporates many of those lessons.

Yesterday, I also heard Members argue that the Specter amendment would create confusing chains of command for the National Security Agency, the National Reconnaissance Office, the National Geospatial-Intelligence Agency, and the intelligence collection elements of the Defense Intelligence Agency. I respectfully disagree.

In addition to providing the national intelligence director with the authority to direct, supervise, and control these agencies, the Specter amendment clarifies other provisions of law to specifically address this concern. It amends title 10 and title 50, adds two new provisions to the law to specifically clarify that the Directors, again, of the National Security Agency, the National Reconnaissance Office, the National Geospatial-Intelligence Agency, and the intelligence collection elements of the Defense Intelligence Agency report directly to the national intelligence director.

While this amendment gives the national intelligence director direct control over these agencies, they remain ''combat support agencies''—nobody quarrels with that—and the Secretary of Defense will still have influence over them. That is by design. No one is trying to change that. I think it is much better than the bill's current language in which the Secretary of Defense has direct control of these agencies, and the NID only has influence and persuasion. I can tell you from past history, influence and persuasion do not get you very far at the Pentagon.

Some have argued that only the Secretary of Defense can manage the combat support agencies. Some argue that only if the Secretary of Defense manages the Pentagon's national intelligence collection agencies will the warfighter receive adequate support. This is a fallacy. As I said earlier, there is no reason to believe the Defense Department will not receive the support it needs if the Pentagon's national intelligence collection agencies report to the national intelligence director.

The amendment provides the Secretary of Defense with important feedback mechanisms to make sure the Department is getting the national intelligence support it needs.

First, the Secretary of Defense is required to provide the national intelligence director with some performance appraisals for the directors of the national intelligence collection agencies. Second, the national intelligence director will receive recommendations from the Chairman of the Joint Chiefs of Staff based upon a biannual review of the combat support plans for the National Security Agency; again, the National Reconnaissance Office; again, the National Geospatial-Intelligence Agency; and the DIA, again, the Defense Intelligence Agency.

Working with the Secretary of Defense through these feedback mechanisms, the national intelligence director will ensure that the Defense Department's intelligence needs are met. Clearly, this amendment recognizes the important support role these agencies play to the Department of Defense in its role as an intelligence consumer.

Now, I also heard the argument yesterday that giving the national intelligence director direction, supervision, and control of the National Geospatial-Intelligence Agency is a bad idea because that agency is responsible for making maps. I point out that this agency used to be named the National Imagery and Mapping Agency, but they changed its name to signal a change in the manner in which it would perform its mission.

The National Geospatial-Intelligence Agency, or the NGA, uses intelligence data acquired by satellites and other means and melds that data into the maps that our entire Government uses. This is what is now called geospatial intelligence. The maps we use have the full benefit of the intelligence data we gather all around the world. Mapmaking is not inconsistent with the national intelligence director's mission.

Another argument heard yesterday against the Specter amendment was that the 9/11 Commission had considered granting the NID direction, supervision, and control authorities but rejected the idea on the grounds that the duties of managing these agencies would overload the national intelligence director. However, I note that the Secretary of Defense controls the military services, the Reserves, the unified commands, the defense agencies, field activities, literally millions of uniformed and civilian personnel, and those who mow the yard outside the Pentagon.

So if I understand correctly, in order not to overburden the national intelligence director, we will leave the national intelligence collection agencies under the control of an already extremely busy and, I might add, effective Secretary of Defense. This logic escapes me.

I also heard an argument that the 9/11 Commission had rejected granting the national intelligence director greater authorities because the Commissioners preferred what was described on the Senate floor as a ''lean, mean modern corporate structure.''

I ask my colleagues, What successful modern corporation would not give its chairman and CEO the authority to direct, supervise, and control every component of the organization for which he or she was held accountable by the shareholders? We should not confuse direction, supervision, and control with micromanagement.

I also heard the argument that the Specter amendment would promote group-think within the intelligence community. Well, I can tell you that the Senate Intelligence Committee wrote the book on the occurrence of group-think in its report on the prewar assessments on Iraq's WMD programs.

It is a problem that we on the committee watch very carefully every week, almost every day. I do not believe the Specter amendment will promote any kind of group-think. I would be concerned about the risk of group-think if we were proposing to grant the national intelligence director the authority to direct, supervise, and control the analytical content of our national analytical agencies. That is not what Senator SPECTER's amendment proposes. It proposes direction, supervision, and control over the Department of Defense's national intelligence collection agencies.

Additionally, as was seen in the committee's examination of the prewar assessments—as I say, it took us over a year, 22 professional staff members; we interviewed over 220 analysts—the creation of a strong national intelligence director will prevent group-think in the intelligence community. A strong director will ensure a level playing field in which the analysis of all agencies will be given full consideration and equal consideration based upon the quality of the analysis when intelligence community assessments are being developed. If anyone has studied the committee's Iraq report—and I encourage Senators to read it, 511 pages—they know that the lack of a level playing field was a major problem.

Mr. President, with that I am going to conclude my remarks. I urge Members to support the Specter amendment.

The Specter amendment has been described as a ''bridge too far.'' This well-known term is a product of the tragic Battle of Arnhem, Holland, in 1944.

Many historians see the tragedy of Arnhem as a combination of errors, i.e., the undertaking, for some political

reasons, of an ill-advised military campaign opposed by American commanders; i.e., and a massive intelligence gap that failed to detect a large concentration of German armor in the area.

Mr. President, the ''bridge too far'' analogy is apt, but it cuts in favor of the Specter amendment. We must not, for political reasons, fail to make the hard decisions that are necessary to ensure a strong, in-charge national intelligence director.

These decisions are difficult. They are hard. But these decisions are critically needed. The changes we make today have one overarching goal: to prevent another intelligence failure on the order of Arnhem and September 11. Because of those failures, the allies suffered 17,000 casualties and, obviously, on September 11, 3,000 died.

Failure to approve the Specter amendment may be seen by historians as a tragic half-measure that led to another Arnhem or another September 11.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I ask unanimous consent that Senator BOND immediately follow me in order.

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

Mr. HATCH. Mr. President, I associate myself with the remarks of the distinguished chairman of the Intelligence Committee.

I rise today to support the amendment offered by Senator SPECTER. This amendment has the support of Senators SPECTER, SHELBY, and ROBERTS—two former chairmen of the Intelligence Committee, as well as the current chairman of the Senate Select Committee on Intelligence. I have had the pleasure to work closely with these colleagues, and I respect their experience and their independent thinking on intelligence matters.

This amendment is also cosponsored by a bipartisan group of Senators from the Intelligence Committee. This amendment establishes the goals set forth by 14 Senators who addressed a letter to Chairman COLLINS and Senator LIEBERMAN on September 20, 2004, in which they sought to ensure that the national intelligence director has the ability to control the day-to-day operations of all of our national intelligence assets.

I consider myself privileged to serve as a member of the Intelligence Committee during these difficult and historic times. Yet I can also say that during these years I have heard too many excuses for intelligence failures. I have seen firsthand the damage that comes when the head of the intelligence community lacks the ability to effectively lead our national intelligence agencies.

The chairman and the ranking minority member of the Governmental Affairs Committee have taken on a monumental task, for which I am grateful. They have been charged with writing a bill that modifies the National Security Act of 1947, to give the national intelligence director greater budget control and stronger authority to manage the intelligence community. This task, as we all know, has been extremely complicated.

It is particularly difficult when one considers the broad authorities that the National Security Act of 1947 already granted to the Director of Central Intelligence, as head of the intelligence community.

Under that act, the DCI was given substantial authority to develop a budget for national intelligence activities, to set election requirements and priorities, and to direct intelligence analysis. The Intelligence Committee has observed over time, however, that the DCIs cannot exercise their authorities because they do not have actual control over the operations of the national intelligence agencies. This is because the National Security Agency, the National Reconnaissance Office, and the National Geospatial-Intelligence Agency report operationally to the Secretary of Defense, and DCIs have had to negotiate and cajole to ensure that their operational initiatives were met. As a result, to keep from hindering this day-in/day-out negotiation, DCIs were unable to effectively exercise their broad budget authorities.

There is no greater example in my eyes—or at least modern example—than in 1998, when former DCI George Tenet recognized that we needed to direct all of our intelligence resources to defeating al-Qaida. This was his famous ''declaration of war'' against al-Qaida, and he declared that no resource of intelligence would be spared to defeat al-Qaida. He was ignored by the intelligence community that he was in charge of leading.

For example, the National Security Agency retooled for a different signals intelligence mission, not for the war on al-Qaida. We simply cannot ignore this example of unused DCI authorities. We cannot forget the lessons of past intelligence failures. I am concerned that the best intentions of the Governmental Affairs legislation will never be fulfilled and that the good authorities granted to the national intelligence director under the legislation will never be effectively exercised.

The debate we are having today about the authorities of the national intelligence director versus the Secretary of Defense has occurred in this town over and over again since the National Security Act was first passed back in 1947. As the intelligence community grew, the authorities of the Director of Central Intelligence were diluted as the Secretary of Defense gained a greater share of control over our intelligence agencies.

We have a unique opportunity in the next few weeks to establish a structure that puts someone truly in charge of our national intelligence mission. I think we have to take this opportunity to clarify the confused chains of command that have handcuffed past Directors of Central Intelligence.

With a national intelligence director empowered to ''supervise, direct and control'' our national collection assets, we will implement real reform, not just establish another bureaucratic level and finally have one person who is actually accountable to the President and to Congress. Only with the Specter amendment's clear chains of command will we give the national intelligence director the authorities necessary to meet his vast responsibilities.

Some will argue that the Specter amendment goes too far; that it is just too hard to separate the NSA, NRO, and NGA from the Department of Defense; that it will hinder intelligence support for the warfighters. The argument made has not been compelling. Why are clear chains of command a bridge too far, as some have suggested? That is a clear image, but it does not illuminate the argument. Why should we rely on a mishmash of budget and personnel controls to put a national intelligence director nominally in charge when we know that real control and accountability will only come with a clear chain of command to the director? We have all been saying that for months and so has the 9/11 Commission. Why are we talking about current provisions of law to show that these combat support agencies can't be separated from the Defense Department?

Let's not let arguments about current law confuse the issue. We are talking about putting a national intelligence director in charge. We are debating a bill that would change current law. If the Specter amendment requires, we can accommodate other necessary provisions.

Finally, no one believes that the NSA, NRO, NGA, and DIA would stop supporting the warfighter if this amendment is enacted. Really, does anybody? The answer to that is no. If I believed that, I would not support this amendment. Why would a national intelligence director turn off the intelligence support upon which our warfighters rely so much? I have never known a DCI to do such a thing. No national intelligence director would ever shortchange the warfighter. No President or Congress would ever permit that. In fact, the Specter amendment recognizes the unique position of the Department of Defense as an intelligence consumer—giving the Secretary of Defense the right to prepare annual performance evaluations for the Directors of the Central Intelligence Agency, the NRO, NSA, NGA, and DIA, and maintaining the Joint Chiefs biannual review of the combat support plans of the NRO, NSA, NGA, and DIA.

What the Specter amendment does not do is maintain the current confused chains of command for the national intelligence collectors within the Department of Defense. The Specter amendment recognizes that accountability and effective management are only possible with clear chains of

command. The blunt tool of budget control is not an effective mechanism for flexible midcourse corrections in intelligence collection that a national intelligence director must be able to make, without having to negotiate or consult for his or her priorities.

If the confused chains of command of the status quo are an effective mechanism for control, we should ask the Secretary of Defense if budget control would be sufficient for him to ''coordinate'' a war. If the Secretary of Defense only controlled the Army's budget, would that be sufficient command of the Third Infantry Division? If he only controlled the Navy's budget, could he order an aircraft carrier from one ocean to another and expect it to move? If the answers to those questions are no, then why should we settle for anything less than full direction, supervision, and control of national intelligence collection for the national intelligence director?

I support the Specter amendment. I know everybody on this floor is sincerely trying to resolve these problems as best they can. I commend the distinguished committee for the work it has done in bringing this bill to the floor and the two leaders on the floor. But I think we should support the Specter amendment. I urge all my colleagues to do the same.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I thank the Chair and appreciate the words of my colleagues.

In spite of years of recognition that intelligence was in dire need of reform, the catalyst of this year's reform initiative was the tragedy of September 11, 2001. The intelligence failure of Iraq's WMD programs only underscores this point.

I applaud many of the provisions of the Collins-Lieberman bill. However, I stand in support of the Specter amendment as a means to provide absolutely essential powers to the national intelligence director. For those who may just happen to be listening for the first time, the national intelligence director is now known as the NID. But this NID must have powers to bring together fully and effectively our national collection efforts.

In spite of my respect and admiration for the efforts of my colleagues, I remind the Senate that now is the time for bold action. This deliberative body must be prepared to stare down very powerful executive branch bureaucracies—and a few of our own—that are instinctively protecting their turf. Three thousand dead Americans should be a message to all of us that we must make significant changes.

A witness before the Senate Intelligence Committee put it well. She said:

> History's lesson is to make the most of reform opportunities when they arise because they do not arise often and they do not last long. We have one of those rare windows of opportunity now. And if the past is any guide, there will not be another chance for a generation. These realities mean that reforms should be sweeping because they will be lasting. The choices we make will be with us for decades to come.

I fear we are not being as bold in the underlying bill as circumstances demand. We all agree that the 9/11 Commission published a great report outlining in detail the events of September 11, 2001.

We could not and we should not detract from their efforts. However, one fundamental concern I have in this is that it is now 3 years after 9/11, and we are only now taking action, largely based on the recommendation of a panel not specifically chartered to focus on the intelligence failures leading to 9/11.

I am concerned that a commission directed by law to investigate the ''facts and circumstances relating to the terrorist attacks of September 11, 2001,'' has become the only basis for intelligence reform.

Well, there is a lot of work that has been going on in this body and in the other body about intelligence reform that is not covered in the 9/11 report.

Just since the end of the Cold War, there have been many major studies of intelligence reform, staffed by intelligence professionals. They include the joint Senate/House inquiry into 9/11, the Aspin-Brown Commission, IC21 study, the House Permanent Select Committee on Intelligence study, the Scowcroft review, and many others.

As I listen to the debate on this Collins-Lieberman bill, I am concerned that the truly meritorious recommendations and thoughts from these other commissions have been largely disregarded. Rather, I seem to hear—behind most of the key provisions in the bill—the rationale that ''the 9/11 Commission said so.'' Well, we do respect and take seriously the work of the 9/11 Commission, but we must be sure that we consider the other recommendations of studies specifically examining the intelligence process. I happen to think that many of those are more accurately reflective of the needs of the intelligence community.

Recommendation No. 1, from the joint Senate/House inquiry into the 9/11 intelligence failure was:

> Congress should amend the National Security Act of 1947 to create and sufficiently staff a statutory director of national intelligence who shall be the President's principal advisor on intelligence and shall have the full range of management, budgetary, and personnel responsibilities needed to make the entire U.S. intelligence community operate as a coherent whole.

The House Permanent Select Committee on Intelligence's staff study entitled, ''IC21,'' or ''Intelligence Community in the 21st Century,'' stated:

> The [intelligence community] would benefit greatly from a more corporate approach to its basic functions. Central management should be strengthened, core competencies (collection, analysis, and operations) should be reinforced and infrastructure should be consolidated wherever possible.

The 9/11 Commission's Vice Chairman, Lee Hamilton, for whom I have a great deal of respect, admitted to our committee in open session that they really had not even considered more bold reform. He said the Commission simply looked at things they thought they could accomplish. I believe the word he may have used was ''pragmatic.'' They simply did not consider more bold reforms, so maybe we ought not to consider their recommendations as final. It is up to us. We have the ultimate responsibility of passing this bill. Are we going to pass what is pragmatic, what seems to be the least upsetting to the bureaucracies or do we want to be bold and pass something that will make the intelligence community work? Count me in the latter category.

Yesterday, my good friend, the chairman of the committee writing this bill, alluded to some of the concerns I have. When responding to concerns about DOD being shortchanged by the NID's budget authority, she reminded us all that ultimately the President determines the budget. That will always be the case. Let us not also forget that the bureaucracies of the OMB and many committees of the Senate and the House also determine the budget. There is simply too many ways to water down the limited real authority that budgetary powers provide. More real day-to-day authorities are needed, especially if we are to hold a NID accountable for our intelligence efforts. As bothersome as the OMB is in the effective operation of Government—I say that only half facetiously—does anybody think the OMB runs the agencies of Government? They mess them up sometimes. There are a lot of areas I can tell you where the OMB has shortchanged vitally important activities. But run them? I don't think so. Budgetary authority is not the same thing as running an agency.

The way I read the bill, it seems as though any agency or department that didn't want to chafe under a powerful NID has found a way out. This bill leaves the door open for several key agencies, such as the State Department's Bureau of Intelligence and Research, INR; major portions of the FBI'S intelligence operations capabilities; the Department of Energy's Office of Intelligence; the Treasury Department's Office of Terrorism and Financial Intelligence, and others, to avoid the authority of a NID. So under the Governmental Affairs bill, a NID who declares war on al-Qaida—as referenced by Chairman ROBERTS of the Intelligence Committee a few minutes ago—will have even fewer troops to try to muster for this war, and little additional power that doesn't already exist today.

Let us recall that every knowledgeable voice on this issue is adamant: If you create a NID, he must be given power; otherwise, you create an intelligence czar and have made the problem worse. We have created a drug czar

and all kinds of czars, but they are not able to get the job done. As I continue to listen to DOD proponents, I am concerned that insufficient authorities are granted in the GAC bill, and they will be even further eroded, putting us one step closer to creating an intelligence czar with a great title and very little authority.

One of the recurring themes we always hear on the Intelligence Committee—on which I have had the pleasure to serve for only a year and three-quarters—is the reluctance of the agencies to share information with those who need to know. We know all too well there are many legitimate reasons not to share intelligence. We understand the need to protect sources and methods. We also understand that decisions not to disseminate some information may rightly involve protecting U.S. civil liberties. But parochialism, poor information architectures, and bureaucratic confusion should not be included amongst the reasons to squirrel away intelligence that we need by cognizant analysts throughout the community.

Three years after 9/11, and after dozens of hearings in which intelligence community management describes ''seamless'' intelligence sharing, we end up prying a little deeper to find out that it simply is not the case. While there have been improvements in some areas of intelligence sharing, they are often done under duress. As soon as the ''heat'' is off, you can bet that those parochial agencies will return to intelligence hoarding, not intelligence sharing. We must empower a NID to force appropriate intelligence sharing even in times when the congressional and executive spotlights are not on the issue.

I believe it has already been referred to on the Senate floor that at a recent hearing, the intelligence committee was truly dumbfounded as we listened to different agencies talk about a specific threat. Two agencies had a very different view of the severity of that threat when they started talking to each other at the witness table.

One of the agencies said: We have information that you don't have.

They were supposed to be working on the same threat. I asked a dumb question. I said: Why didn't you share it? They said it was sensitive information. Well, wait a minute. They were trying to give us a recommendation on a very serious matter, and the two agencies that were supposed to work together on this serious matter didn't want to share information with each other? I used to think when we worked on a need-to-know basis, if you have a sensitive collection system, you need to keep the name and identity very closely guarded. They were happy to tell us in the Intelligence Committee the reason they were keeping a particular source on another matter in confidence was because it was so sensitive. I will tell you one thing. If you have ever seen a sieve, it looks too much like the Intelligence Committee. We don't need to know the names or even the identifying features of an intelligence source in the committee. But if that is the essential element on which the analysts are going to determine whether this particular source is reliable, they ought to be sharing it on a very limited basis with all of the people involved in the task.

I understand that the information that was gathered by the Iraqi Survey Group after the war was very effective because they brought in collectors and analysts from different agencies who were working on the same problem and they put their heads together. What a wonderful thing. They must have had a table. They laid out the information on the table. They did what informally is called ''red teaming'' and they came up with better estimates.

The NID, the national intelligence director, needs to be able to take care of this himself, not to negotiate with the positions with other departments or go to the White House and Congress and say, will you get these guys together to talk?

This reluctance to share information appears to be so deeply ingrained that only direct orders to do so are adequate, not budgetary influences.

Let me be candid. As a member of the Intelligence Committee I am convinced that the worst offenders of not sharing intelligence are the CIA and the NSA, but there are others. Arm twisting that is largely limited to budgetary problems and powers will not solve the problem. We know getting the information shared among agencies, red teaming, as they say, is very important. In other words, if the players are at the table, they are going to get their best result when everybody turns over their cards and shows what they are holding, but right now some of the agencies are going to the table and keeping their cards face down, saying, boy, we know some stuff, it is in our hand, and we are not going to show you.

Budget authority alone is not going to get them to turn over the cards. Red teaming cannot be successful unless the cards are turned over and the red team knows what cards the CIA is holding, for example.

Full deference should be given to civil liberties concerns, and I hope that the Collins-Lieberman provisions for improving information architectures within the intelligence community will allow for getting the right intelligence to the right people, and in the case of very sensitive intelligence or any other critical, possibly damaging intelligence, only to the right people. But it has to be gotten to the people who need it.

Some have argued that the Specter amendment will lead to too much centralized control, therefore group-think. Not likely. Let's be clear. The Specter amendment deals with national collection, entities of the NSA, NGA, portions of the DIA and CIA. This will help streamline collection and reduce inefficiencies. It will allow the NID truly to harness the collection capabilities against our Nation's primary threat: The terrorists.

This leaves capabilities organic to the DOD currently funded under the Joint Military Intelligence Program, JMIP, and the Tactical Intelligence and Related Activities, somewhat glamorously acronymed the TIARA, still firmly under DOD control, as they should be. DOD will not be shortchanged and our Nation will have a more effective collection effort.

Today, the DOD is the most voracious consumer of intelligence. That is why they have the lion's share of the intelligence budget and significant organic collection assets whose sole function is support to the warfighter. However, national collectors must be unified in an effort to meet national needs which include those of the key intelligence entities in our war or terror: DOD, CIA, FBI, and the Department of Homeland Security, where the appetite for terrorism-related intelligence collection will only continue to grow.

I heard debate yesterday on the combat support agencies. Nobody denies that these agencies, the NRO, the NSA, and the NGA, are still combat support agencies, but as their name suggests, they also serve national interests. When we examine this in a larger light, we realize that having these agencies report directly to the Secretary of Defense solely made sense during the Cold War. However, as I mentioned earlier in this statement, the decisions we make today will be with us for decades to come.

The world has changed. The war on terror is not going to go away soon. While DOD is still a voracious consumer of intelligence, it is now a partner with the CIA, FBI, the Department of Homeland Security, and others in the war on terrorism. As other agencies continue to join CIA and DOD as coequals, it makes sense to have a national intelligence director who can see to the needs of all of these agencies and best harness all national collection capabilities to meet our national needs.

Again, we need to look decades down the road. We must recognize the need to empower a NID to meet these needs. I believe Chairman ROBERTS has already mentioned this several times, but let me state that the Directors of the National Security Agency and the National Geospatial-Intelligence Agency stated that having their agencies transferred to the control of a NID would not degrade their level of support to the military. Considering their testimony, as well as other commentary and the maintenance of DOD's military intelligence collections, the Pentagon need not fear the Specter amendment in any way.

It so happens I have a personal interest in this. As many of my colleagues know, my son is a young ground intelligence second lieutenant in the Marine Corps. I certainly do not want to

do anything that would interfere with his or his comrades' ability to get the information, the intelligence, the estimates, and the tactical intelligence they need to leave them hanging out without adequate cover. My colleagues can bet I would never do that.

I conclude by giving some thoughts from Dr. David Kay, the interim head of the Iraqi Survey Group, who testified before us many times and who was a real bright light in gathering intelligence. He is certainly not afraid to speak the truth in spite of whom he may offend. He told the Intelligence Committee:

> I am concerned, however, that simply creating a national intelligence director, even one that seems to have—and we think has—real powers . . . and we think budget and personnel authority is real power, we will not end up addressing the real problems . . .

Well, budget and personnel authority is some power but, as Dr. Kay indicated, it is not real power.

Dr. Kay further stated:

> I think you need to place the national intelligence director in charge, charged by you, Congress, with ensuring that all of the collection assets of this government work to support the national intelligence strategies and priorities.

Dr. Kay recognizes the need for a unified collection effort. We cannot afford to waste or misuse scarce collection assets. I think Dr. Kay also knows the frustration of fragmented control quite well. He was a DCI special adviser on Iraq and then, as I have noted, headed the intelligence efforts of the Iraq Survey Group, or ISG. He wrestled with authorities quite frequently. In large part, this was due to the limited powers of the DCI vis-a-vis other department heads, but when they made progress is when they coordinated and cooperated and the agencies worked together.

I urge my colleagues to support the Specter amendment. This is a key fix to give the NID some of the powers he or she will need if we are to ask the NID to be accountable for our national intelligence effort.

I yield the floor.

Mr. SHELBY. Mr. President, I rise to express my strong support for the Specter amendment currently pending before the Senate. However, I want to first take a moment to commend Senator COLLINS and Senator LIEBERMAN for their hard work and dedication to this important legislation. These are difficult issues and I believe that we all strive to reach the same goal—a safer, more secure America. The question before us now is how we best accomplish that goal.

I have long advocated for significant overhaul of the intelligence community in order to change the way it operates and specifically who controls the community and its assets. For too long, the intelligence community has lacked a strong leader with the ability to command and control the multitude of agencies that operate as independent parts without a focused direction.

I do not believe that Congress's action in 1947 intended to create the intelligence framework we currently have—a framework where no one has the ability to direct the actions of the community as a whole. I believe that Congress intended to create a Director of Central Intelligence with clear lines of authority and accountability within the intelligence community—one that is much like what we are attempting to create now with a national intelligence director.

The underlying bill does take some important steps toward the creation of a national intelligence director with the power and authority to chart a path for real reform within the intelligence community. Unfortunately, I believe that the underlying bill fails to provide the national intelligence director with all of the authorities required to provide the unity of leadership and accountability necessary for real reform.

I believe that clear lines of authority between the national intelligence director and our national intelligence collection agencies, extending beyond budgetary control, are critical to our success in countering national security threats of the 21st century. The national intelligence director must have the ability to direct, supervise and control the elements of the intelligence community.

There must be no doubt in anyone's mind that the national intelligence director is in charge. Without the additional authorities that are provided in the Specter amendment, there will be doubt.

The Specter amendment seeks to eliminate any question about who is ultimately in charge of the intelligence community. With the additional authority included in this amendment, there will no longer be an opportunity for finger pointing and excuse making.

Ultimately, the national intelligence director will either be congratulated for the success of the intelligence community or held accountable for their failures.

I believe that budgetary authority is an important part of the overall structure of a strong national intelligence director. But beyond that, he or she must have day-to-day operational control of all elements of the intelligence community performing national intelligence collection missions, including the Central Intelligence Agency, the National Reconnaissance Office, the National Security Agency, and the National Geospatial-Intelligence Agency, and the humint parts of the Defense Intelligence Agency.

Giving the national intelligence director budget authority but not day-to-day operational control will leave the intelligence agencies serving two masters and will inevitably maintain the status quo that has continuously failed us. Fundamental change is a must if we are going to work to prevent any further attacks.

I believe this amendment serves as a perfect complement to the actions taken in the National Intelligence Reform bill. This amendment simply enhances the authority of the national intelligence director.

I continue to believe that change for the sake of change will do nothing to accomplish our goal. A powerful national intelligence director is a vital part of our future fight against the terrorists that have dedicated their lives for the purpose of destroying America and its citizens. If we truly want to create a strong national intelligence director who has the authorities necessary to command and control our intelligence community and its assets, we must pass the Specter amendment.

I urge my colleagues to take advantage of this opportunity and support this amendment to ensure that true change is possible through the enabling of a powerful national intelligence director.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I oppose the Specter amendment and I will take a few minutes to explain my opposition. I think all of us are in favor of bold moves, of having a powerful new national intelligence director and having analysis that is independent and objective, much more so than has been the case in the last few decades and recently, to have that analysis done by a group which can bring together all of the information and come up with a coordinated position which is independent and objective, and the NCTC is able to do that.

This amendment would place the National Security Agency and the National Geospatial-Intelligence Agency, the NSA and the NGA, and the National Reconnaissance Office, the NRO, under the direction, supervision, and control of the national intelligence director and would do the same for the Director of the Defense Intelligence Agency regarding the national intelligence collection mission of the DIA.

In doing so, this amendment would have the national intelligence director basically be substituted for the Secretary of Defense in the military chain of command. There are thousands of uniformed members of our military who are currently in those agencies.

To break the chain of command and to say for the first time we are going to take thousands of uniformed personnel and put them under the supervision, direction, and control of a civilian agency head would create havoc inside of the military, would create a very unfortunate precedent, and would in the process be creating a new agency, a new agency that would require a supervisory staff similar to the supervisory staff that now exists in the Office of the Secretary of Defense for the agencies which would be transferred.

Those are the two major reasons I have problems. There is a third I want to talk about in a moment. But the two major reasons I have are that it would require the creation of a whole new supervisory bureaucracy for these

agencies in the national intelligence director's office. You cannot supervise these agencies, from the national intelligence director's perspective, without having people to engage in that supervision the way the Office of the Secretary of Defense now supervises and overseas these agencies. So we would be creating a new bureaucracy.

We should be breaking down walls between bureaucracies, not building up a new bureaucracy.

When the 9/11 Commission reached its conclusion and when they testified in front of us, they told us they decided not to create a department. They thought that would be overcentralization. They were bold. I don't think anybody can successfully argue here that the 9/11 Commission was not bold. They were bold. They made some major shifts, in terms of budget execution authority and in terms of personnel authority. In shifting those authorities over the agencies which we are debating here to the NID, they made a major decision relative to power, relative to control. But they decided they would not go toward a more centralized new agency; that they would rather coordinate with the budgeting personnel power in a new powerful NID but not create a new bureaucracy in the process.

There are many reasons why their decision—and I focus on the 9/11 Commission recommendation at our hearing—was a wise one. Their approach was not just bold in terms of recommending the transfer of budget and personnel authority, but it was wise in not creating a new bureaucracy in the process.

The chain of command is such that we now do not put large numbers of our uniformed military people outside of the chain of command and under the command and control of civilian supervisors. We do not do that. There is a purpose for having a chain of command from your commander inside the military, which is clear, which you must abide by. That is what you sign up for when you join the military and that is what is so essential to military effectiveness, that the chain of command be solid and that it not be broken in the way this amendment would break a chain of command.

These agencies we are talking about today are integral parts of the Defense Department. They are recognized for the support they provide to combat operations. Indeed, when the Congress adopted the Goldwater-Nichols Reorganization Act of 1986, we created the concept of ''command support agencies.'' Pursuant to that legislation, the DIA and the National Geospatial-Intelligence Agency have been designated by law as command support agencies. We hear that designation will continue. But it is pretty hard to square that with what this amendment proposes, which is that they would not be inside the military chain of command. They would still have the label but not the reality. They would be called combat support agencies, but they would not be in the chain of command of the Department of Defense.

The combat support functions of the DIA and the NSA and the NGA have been recognized in law. The Chairman of the Joint Chiefs of Staff is required by law to evaluate periodically, and not less often than every 2 years, the responsiveness and readiness of these agencies to support operating forces in the event of war or threats to national security. The pending amendment would preserve the form of the periodic review. That periodic review by the JCS Chairman of the combat support agencies of the intelligence community would be retained, but it would be a report which is in form only because it is the Secretary of Defense who is charged with being responsible for the combat capabilities of the Armed Forces.

The NID, the national intelligence director, does not have the responsibility that the Secretary of Defense has for the combat capabilities of our Armed Forces. So to simply say, well, there will still be a periodic review by the Chairman of the Joint Chiefs of the combat support agencies of this community, but then to say that report goes to the NID, the national intelligence director, instead of going to the person who we make responsible for the combat abilities of the Armed Forces, is a hollow gesture. It says that one thing will continue to be true, we will still call them a combat support agency, but when it comes to the real world of where that review goes, it will go to the person, the national intelligence director, who is not the person responsible for the combat capabilities of the Armed Forces. So we have a break in the chain of command, which is unprecedented, which creates all kinds of problems inside the military in terms of military effectiveness, which weakens not only the power of the Secretary of Defense but which undermines his responsibility to make sure we have full combat capability inside of the Department of Defense.

For these reasons, that we should not be creating a new bureaucracy, we should be breaking down walls of old bureaucracies; that this amendment would require new supervisory staff over these entities if they are going to be transferred to the national intelligence director in order to help him perform the supervision of these agencies, which is now performed by the Office of the Secretary of Defense; and because this would represent an unprecedented break in the chain of command that now exists, and which is so critical to our military effectiveness, I believe the 9/11 Commission reached the right balance. Their balance was one which was conscious and conscientious; it was bold but it was wise.

I have one other thought which I want to share and then I will yield. These agencies now do analysis on their own. We got some very important analysis before the Iraq war, in fact, from the Defense Intelligence Agency, analysis which was different from the analysis produced by the Central Intelligence Agency. If we are serious about wanting alternative views relative to intelligence; if we are serious, as the 9/11 Commission urges us to be and as I hope we are, about ending the politicization and misuse of intelligence to support policy positions; if we are serious about promoting objectivity and independence of analysis, we would want these agencies not to be shifted because their analysis should not be under the control of the national intelligence director. Their analysis should be independent and objective. For these agencies to be shifted outside of where they now are, separate from the national intelligence director, and put underneath his umbrella, is going to make us weaker when it comes to the most critically important reform we should be producing, which is to have objective, independent analysis of intelligence which can be provided to the policymakers and not shaped to support policies of the policymakers.

To remove these agencies that now are in a position to provide alternative analysis and to put them under the aegis of the national intelligence director will make that many fewer sources of independent, objective intelligence that will be available to our policymakers. That is a real loss.

There are other provisions in this bill and other provisions I hope will be added during the amendment process to promote the objectivity and independence of intelligence analysis.

We have had too much abuse in this area. We have had too much shaping and exaggeration, going back at least as far as the Gulf of Tonkin Resolution, when intelligence was misused, to the Iran-Contra years when intelligence was misused, shaped, and exaggerated in order to support particular policy positions, and the same thing happened before the Iraq war. We have to find ways to break down any kind of group-think, any kind of a monolithic approach to intelligence, and we have to make it more difficult for a national intelligence director to be doing the shaping, to be in total control of the analysis of intelligence.

That is why having an NCTC office separate from NID is so important. Having an NCTC director who is subject to the confirmation of the Senate is so important. That is why some of the other provisions which we were able to add in committee to promote the independence and objectivity of the intelligence analysis are so important.

We should not be reducing the numbers of sources of independent analysis of intelligence, as this amendment would do, by putting these agencies that now produce intelligence analysis under the aegis, supervision, and operational control of the national intelligence director. It is too much concentration of that critically important analysis power under one person. We

should be wary of doing that. We should be moving in a very different direction.

We should be finding ways to plot independence and objectivity of intelligence so we don't have a repeat of the fiasco we just saw where we had 500 pages, according to a bipartisan Intelligence Committee report, of instances where intelligence was shaped, stretched, and exaggerated, and they all moved in one direction. All those intelligence changes and all the shaping was moved in the direction of supporting a particular policy of the administration. That is a great danger.

This amendment, because it concentrates or would concentrate agencies that are currently involved in intelligence analysis under the NID, increases the danger rather than reduces the danger of having intelligence which is shaped to support policy rather than provide support for objective information and objective estimates to the policymakers.

I oppose this amendment. I hope it will be defeated.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I ask unanimous consent that Senator DEWINE be added as cosponsor of the pending amendment.

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

Mr. SPECTER. Mr. President, I am advised that Senator SHELBY would like to speak to the bill. He is now chairing the Banking Committee, which is hearing from the 9/11 Commission. I have talked to the manager of the bill. I ask unanimous consent that the pending amendment be set aside so we might start utilizing the time of the floor on another amendment which I intend to offer.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 3761

Mr. SPECTER. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER], for himself and Mrs. FEINSTEIN, proposes an amendment numbered 3761.

Mr. SPECTER. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To specify a term of service for the National Intelligence Director)

On page 10, between lines 16 and 17, insert the following:

(d) TERM OF OFFICE; REMOVAL.—(1) The term of service of the National Intelligence Director shall be ten years.

(2) An individual may not serve more than one term of service as National Intelligence Director.

(3) Paragraphs (1) and (2) shall apply with respect to any individual appointed as National Intelligence Director after the date of the enactment of this Act.

(4) If the individual serving as Director of Central Intelligence on the date of the enactment of this Act is the first person appointed as National Intelligence Director under this section, the date of appointment of such individual as National Intelligence Director shall be deemed to be the date of the commencement of the term of service of such individual as National Intelligence Director.

On page 10, line 17, strike ''(d)'' and insert ''(e)''.

On page 11, line 3, strike ''(e)'' and insert ''(f)''.

On page 11, line 5, strike ''subsection (c)'' and insert ''subsection (e)''.

Mr. SPECTER. Mr. President, this amendment would give the national intelligence director a 10-year term, the same kind of a term the Director of the Federal Bureau of Investigation now has. The debate on this bill generally has stressed—and appropriately so—the need for a strong, independent national intelligence director.

The interest of having policy determinations guide our new intelligence estimates has been stressed repeatedly. There is a very broad, historical precedent of the desirability of taking steps to guarantee to the maximum extent possible that the intelligence estimates will be independent and will not be in line to try to promote some specific policy objective.

The 10-year term, as I say, is modeled after the term of the Director of the Federal Bureau of Investigation.

When I offered this amendment in committee, I had a provision for removal only for cause. After considering the matter, I have stricken that provision because I believe it is unnecessary. I believe by analogy to the FBI Director, the inference is plain that the removal can be only for cause.

I will refer very briefly to comments by Senator BYRD on July 26 of 1976 when the FBI Director was given the 10-year term. Senator BYRD said, ''The setting of a 10-year term of office by Congress would as a practical matter preclude or at least inhibit a President from arbitrarily dismissing an FBI director for political reasons.''

Senator BYRD goes on to note that obviously a successor would have to be confirmed by the Senate. But there could not be the removal of the FBI Director for political reasons. The implication is pretty clear that removal can only be for cause.

The additional views of Senator LEVIN on the national intelligence reform bill which he submitted on September 27 contain a very good summary of authorities on this proposition generally. I am going to cite a number of the authorities which Senator LEVIN referred to in those additional views. I complimented Senator LEVIN a few moments ago on the floor of the Senate for the quality of his views which he submitted and said I was going to quote him. He said it was unnecessary, but I believe in the interest of full disclosure that it is good to give Senator LEVIN that credit.

The references to what happened with the Gulf of Tonkin Resolution where that intelligence reports were used—and inappropriately used—for representations about intelligence to support the administration's position are well known historically. The Secretary of Defense at that time, McNamara, cited classified information to support the passage of the Gulf of Tonkin Resolution which President Lyndon Johnson wanted. Those citations were made to support the conclusion that the Gulf of Tonkin Resolution ought to be adopted.

The analyst for the National Security Archive, John Prados, said that Secretary McNamara used the intercepts as a ''trump card'' during the 1964 hearings to ''silence doubters.'' According to the views of Mr. Prados, Secretary McNamara asserted that ''intelligence reports from a highly classified and unimpeachable source reported that North Vietnam was making preparations to attack our destroyers, and ''the attack was underway.'' Finally, ''The North Vietnamese lost two ships in the engagement.'' Those materials turned out to be unsubstantiated, as a matter of fact.

It was notorious that Central Intelligence Director William Casey misrepresented intelligence during the Iran-Contra period. The bipartisan Iran-Contra report specified that Director Casey ''misrepresented or selectively used available intelligence to support the policy that he was promoting.''

In former Director of the Central Intelligence Agency, Robert Gates' memoirs entitled ''From the Shadows: The Ultimate Insider's Story of Five Presidents and How They Won the Cold War,'' former CIA Director Gates said or referred to Bill Casey as a DCI who had his own foreign policy agenda and had the estimating program as a powerful instrument in forcing the pace of the policy area.

Former Secretary of State George Shultz, in his memoir ''Turmoil and Triumph, My Years as Secretary of State,'' published in 1993, referred to former Director of the CIA Bill Casey, who had very strong policy positions and was so ideological that they inevitably colored his selection and assessment of materials, once again, using the position of intelligence director to have a determination of policy.

Former Director of the CIA and also former Director of the FBI William Webster testified before the Senate Governmental Affairs Committee on August 16 of this year and said:

With respect to relations with the President, while the leader of the intelligence community must be the principal adviser on intelligence to the President, he must work hard, very hard, to avoid either the reality or the perception that intelligence is being framed or that is read, spun, to support a foreign policy of the administration.

The 10-year term, so it does not coincide with the term of the President, is designed to give the national intelligence director the reality of independence and certainly to avoid the

perception that the intelligence is being spun for the interests of the chief executive.

Two days after Judge Webster testified, the Senate Select Committee on Intelligence heard from former chief weapons inspector David Kay, who said:

Intelligence must serve the Nation and speak truth to power even if in some cases elected leaders choose, as is their right, to disagree with the intelligence with which they are presented. This means that intelligence should not be part of the political apparatus or process.

A 10-year term would seek to ensure, guarantee, that the national intelligence director was independent, and was not a part of the political process or apparatus.

Mr. Kay went on to say:

This is, I think, if you move forward on a national intelligence director legislation, is going to be the hardest thing to communicate, that the national intelligence director must serve the national security objectives of the Nation, and he serves whoever is the President best by giving him unvarnished truth, which will often not be welcome.

Again, a 10-year term would guarantee that kind of independence to the national intelligence director.

On the same day, former GEN Charles Boyd told the Intelligence Committee of the enormous pressures that political appointees are under to ''give the President what he wants rather than what he doesn't want but needs,'' and the upshot of what General Boyd had to say was that rather than seeking a special and close relationship to the President, General Boyd articulates a standard for an intelligence director ''ought to be his distance from the President, his independence of the President, his professionalism and be respected as such.''

Again, a 10-year term would promote that.

A few days ago, on September 21, the very distinguished Center for Strategic and International Studies, a group consisting of former Senators and former Secretaries of Defense, former Directors of the Central Intelligence Agency, and two former Secretaries of State, had this to say:

When intelligence and policy are too closely tied the demands of policymakers can distort intelligence and intelligence analysis, can hijack the policy development process. It is crucial to ensuring the separation that the intelligence community leader have no policy role. A single individual with a last word on intelligence and some policy as well could be a dangerously powerful actor in the national security arena using intelligence to advocate for particular policy positions, budget requests, or weapon systems that often lack the knowledge to challenge.

Here, again, the citation of authorities supports the concept that the national intelligence director ought to be objective, ought not to be seeking to promote any special policy of the chief executive and all of that would be enhanced by the 10-year term.

The amendment which I offer, I do so on behalf of the Senator from California, Senator FEINSTEIN, and myself. I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I certainly understand the intent of the Senator from Pennsylvania in offering this amendment. Indeed, he offered it during the markup of the Governmental Affairs Committee. It was debated at length.

Initially, in considering this issue, I, too, was inclined to believe that the new national intelligence director should have some sort of term of office. However, the testimony we heard through our eight hearings changed my mind in this regard.

Under our legislation, S. 2845, the NID serves as the principal adviser to the President. The individual not only manages the intelligence community and heads up the new national intelligence authority, but serves as the principal adviser to the President. I am stressing that role because I believe that is key to why the director, in fact, should not have a fixed term. It is essential that the NID enjoy the full confidence and trust of the President of the United States. That was a point made by the 9/11 Commission chairman, Tom Kean, at our very first hearing on July 30. But we heard that repeated time and again by our witnesses. All of the former DCIs who came before the committee, representing a variety of times and administrations, were unanimous in their view that the new NID should serve at the pleasure of the President.

The then Acting Director of the CIA John McLaughlin made the point at our September 8 hearing that for the NID to successfully clarify our assignment of serving as the principal adviser to the President, he must enjoy the President's trust and confidence.

Consider a situation where the Presidency changes parties during that 10-year-period. It would be very awkward for a new President of a different party to inherit the national intelligence director from the previous administration. Their world views and philosophy may have nothing in common. Yet the President has to have a close and trusting relationship with the national intelligence director. The President should be able to choose his or her own person for that critical post.

Proponents of having a 10-year term have frequently compared this proposal to the 10-year term of the Director of the FBI. I would note that I asked Director Mueller whether he thought the new NID should have a 10-year term similar to his. He said he did not think a 10-year term or any fixed term was appropriate for the national intelligence director. He said the role of the FBI Director is very different from the role of the national intelligence director.

Over and over again during our hearings, Senator LIEBERMAN and I raised this question with the witnesses because we, too, were trying to reach the right determination. Over and over again, the advice was the same, whether it was the 9/11 Commission, the Acting Director of the CIA, the former Directors of the CIA, or Director Mueller of the FBI. Over and over again, they advised against setting a term.

So we need to create a position where the individual will enjoy the full confidence and trust of the President of the United States. That is the only way that individual can effectively carry out the role he is assigned in this legislation to serve as the President's principal intelligence adviser.

For these reasons, I urge my colleagues to oppose the amendment of the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I also rise to oppose this amendment by the Senator from Pennsylvania. This is, as Senator COLLINS has indicated, a matter we discussed in what I thought was a very thoughtful discussion in our committee deliberation on a similar amendment.

There are good arguments on both sides. The objective here is to balance the independence we want our national intelligence director to have with the importance of having a trusting relationship with the President of the United States. In the end, I concluded it would be wrong to give a fixed term to the national intelligence director for the reason to which I just heard Senator COLLINS refer.

Remember, we have given the national intelligence director two main responsibilities. One is to administer the intelligence community. The other is to be the principal intelligence adviser to the President of the United States. In fact, one could argue, although the national intelligence director as administrator has many customers, if you will, for intelligence, the No. 1 customer is the President of the United States as President and certainly as Commander in Chief. So that is a relationship that must be a trusting relationship.

The danger is that an incoming President will be given someone in whom he does not have that kind of confidence. Unfortunately, history—recent history—gives us an example of that, without attributing blame. President Clinton and then-Director of the FBI, Mr. Freeh, had a relationship that was not mutually confident, and, therefore, he had somebody in that critical position who had very little contact with the President of the United States. He was Director of the FBI, not the principal personal intelligence adviser in the sense of giving advice personally to the President of the United States.

The concern about the independence of the national intelligence adviser is an important one. I feel very strongly that in this bill Senator COLLINS and I offer, and our committee offers to the Senate, we have done a lot to protect the independence of the national intelligence director.

For instance, contrary to the original proposal of the 9/11 Commission, which proposed that this office of the national intelligence director be in the White House, we said no, that may raise questions and in fact problems with regard to the independence of the NID if he or she is just down the hall from the President. That ought to be out of the Executive Office of the President and established as an independent agency.

We went well beyond that in a title particularly that was added in our committee, most of the work of which was done by Senator LEVIN, which is all about the independence of the office, the objectivity of the intelligence that the adviser, the director gives to the President, to the country, to the agencies he serves, independence even to the extent that we say the national intelligence director should be like the Chairman of the Federal Reserve Board in this sense: that he does not need administration approval to testify before Congress, does not need his testimony cleared, if you will, by the OMB.

So there is a lot built in here that is meant to guarantee, as best a statute can, the independence of this office, without hamstringing—if that is the right phrase here—a President with a national intelligence director in whom he does not have trust or in whom he loses trust as time goes on.

But this is that critical a position. I would not want to give a national intelligence director a set term any more than I would want to give a Secretary of Defense, Secretary of State, Director of OMB, or National Security Adviser fixed terms. These are positions that must every day be filled by people who enjoy the confidence and trust of the President of the United States.

For that reason, I oppose the amendment and urge our colleagues to do so as well.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Pennsylvania.

Mr. SPECTER. Madam President, I think Senator LIEBERMAN has advanced an argument in support of my amendment. If I could have the attention of Senator LIEBERMAN, when I quote him, I want to quote him to his face. I want him to hear what I have to say.

I say to Senator LIEBERMAN, we agree more often than we disagree, although we are at odds on two of my amendments today.

But when the distinguished Senator from Connecticut cites the relationship between President Clinton and FBI Director Freeh, I think he is supporting my argument. He is supporting my argument about the need for independence. There was an investigation being conducted by the FBI on campaign finance irregularities, and the President—I would not call him a subject, but he was a part of those who were being looked into on the soft money issue.

Then, without unduly belaboring the point, on this floor we had the impeachment proceeding. Issues involved were obstruction of justice and perjury. So the kind of independence the Director of FBI had by virtue of a 10-year term, I think, served the Nation well.

Going back to the administration of President Nixon, without going into any detail, you had activities by the FBI Director which led to this 10-year term to insulate the Director from the appointing authority by the President.

When the chairwoman refers to a philosophy of having the national intelligence director, appointed by a preceding President, serving the President, I suggest this is not like a Cabinet officer, such as the Secretary of State or the Secretary of Defense, who is supposed to carry out the policy of the President, who is supposed to have the same philosophy. Here we have a national intelligence director who is supposed to tell the President what the objective facts are on intelligence. It is inevitable in human relations, if you know what somebody wants to hear, an inclination to tell somebody what that person wants to hear, especially if that person is the appointing power.

So on the question of confidence and trust, I think the American people would have more confidence and trust in a national intelligence director who is independent from the President.

When the talk and the argument is made about an adviser, here again, the national intelligence director is not an adviser like the Secretary of State or the Secretary of the Treasury or the Secretary of Health and Human Services, carrying out the President's policies and seeking to give him advice to carry out those policies. Here we want somebody who will be strong and independent and objective and tell it like it is, even if it is not what the President wants to hear, and even if it contradicts the policies which the President wants to carry out.

This bill does contain some elements stressing the independence of the national intelligence director such as not requiring permission to testify before Congress, putting affirmative obligations on the national intelligence director to keep the Congress informed as well as the chief executive informed.

I think this is an important addition, to have a strong, independent, objective national intelligence director.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Madam President, first let me say to Senator SPECTER that he is quite right, we do, much more often than not, agree on matters. Unfortunately this amendment is not one of them, notwithstanding the arguments he just made.

There is an interesting historical note we are familiar with that when the 10-year term for the FBI Director came into effect, I was not here, but I gather it was as a matter of reform as against the effective lifetime term that the former Director, Mr. Hoover, had. So that was in that reality.

Here is the circumstance I am worried about. We have done everything we can in this bill to create independence in the national intelligence director position and to set standards that say: You have to level with the President. The worst thing that can happen is if you feel you have to create a good personal relationship and satisfy policy desires. In fact, we have language in here that is quite remarkable that says the national director ''must provide intelligence to the President that is timely, objective, independent of political consideration, and based on all sources available to the intelligence community, information that has not been shaped to serve policy considerations, that comes from a variety of intelligence assessments and analytical views.''

I am quoting directly from our proposal.

We have set up the office of ombudsman, a very unusual office, and, thanks to a combination of Senator ROCKEFELLER and Senator SHELBY, created within it an analytical review unit which will do a kind of quality control on the work of the intelligence director, again to try to ensure that there is a real independence and objectivity and willingness to speak the truth.

The situation I would worry about, if we have a director for a fixed year term of 10 years, would be that the President simply loses confidence in that director for one reason or another. So on critically important questions such as we have seen in our time—do you send American troops into combat, what foreign policy do we adopt toward threatening nations such as Iran and North Korea—if you have a President lacking confidence or trust, and it could be in the competence of the individual or in his or her dispassion or objectivity, you leave the President either without adequate intelligence advice on matters of great national importance or you encourage the President to end-run the national intelligence director, go directly to the head of the CIA and other agencies. That is not a healthy situation.

Of course, it totally undercuts exactly what we are trying do to do, which is to create a national intelligence director who will oversee the total intelligence community. For those reasons, in this situation, I continue to oppose the Specter amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Madam President, I ask unanimous consent that at 2 p.m. today, the Senate proceed to a vote in relation to the Specter amendment No. 3761, regarding a 10-year term, provided that no amendment be in order to the amendment prior to that vote. I also ask consent that following that vote, the Senate proceed to a vote in relation to the Specter amendment No. 3706 regarding the NID consolidation, again with no second degrees in order

to the amendment prior to the vote on the first degree. And finally, I ask that the order with respect to the statements of Senator HARKIN and Senator STEVENS begin following those two votes.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, could we change that request to 2:15 p.m. rather than 2 o'clock?

Ms. COLLINS. I would so modify the request.

Mr. REID. The other is in the form of a question. What could happen here is one person could get the floor and keep it until 2:15. We need some ability to make sure there is an equitable distribution of time during the next 2 hours. I am wondering if the chairmen have an idea how we can divide the time. I see a couple of Senators on the floor. Any one of them could get the floor and talk until 2:15.

Ms. COLLINS. I would say to the Senator that we would welcome people coming to the floor with their amendments. Generally, these amendments are not breaking down along party lines.

Mr. REID. We have two votes set at 2:15. My question, though, is, are we going to divide the time prior to that or just let things happen as they will? That is fine with us.

Mr. LIEBERMAN. Madam President, if I may answer the question, my hope is—and I believe it is the chairman's hope—that we will stay on the bill and people will come over and introduce more amendments, that we have more debate between now and 2:15.

Mr. REID. Is my friend saying the debate is basically completed on these two amendments?

Ms. COLLINS. Senator SHELBY and Senator DEWINE wish to speak.

Mr. REID. If the two managers don't have a concern, I don't either. What we would do is, if the statements are completed, there would be nothing wrong with people setting the amendments aside and offering other amendments.

Mr. LIEBERMAN. Absolutely.

Ms. COLLINS. I believe we are very near the end of the debate.

Mr. REID. I have no objection.

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

Ms. COLLINS. I thank the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Madam President, I come to the floor to support the Specter amendment. I would first like to congratulate my colleague from Maine for the fine job she has done. This is a very difficult bill to put together. It has taken a lot of work. She and Senator LIEBERMAN are certainly to be congratulated.

I would call everyone's attention to the fact that the 9/11 Commission was not the first commission to point out the need for more power in the person who is in charge of our intelligence. Just about every commission that has looked at intelligence reform has come to this conclusion.

Beginning in 1947, the period right after World War II gave birth to the modern intelligence community. Ever since then, this has been a problem. There was a grand compromise that was made at that time and that compromise set us on this path. The situation, though, has gotten worse and worse as time has gone on. And as some of my colleagues have pointed out, we have reached the point where, when George Tenet knew and understood, as frankly few people in this country did, about the threat from Osama bin Laden and al-Qaida and declared war, he looked around and frankly did not have the troops. And the reason he did not have the troops was he did not control the budget. He did not have the power.

He had the responsibility, but he did not have the power. So we have a problem and everybody, I think, understands that. My concern all along has been that we would create this new position, supposedly over the entire intelligence community. Yet this new position would not have the authority. I think Senator COLLINS and Senator LIEBERMAN have given that person authority, but I don't think, frankly, they have gone far enough.

If you look at the language Senator SPECTER has included in his amendment, it is a significant improvement over the language of this bill. I ask my colleagues to read the language. If you are concerned about giving this person authority, the Specter language is much better. The worst thing we could do would be to create this new position and think we have given him or her authority and not have given them the authority.

I wonder if I may get the attention of my colleague from Maine at this time, if I may explore with the Senator part of this bill. Again, I thank my colleague for the great work she has done on this bill. I believe she has done a very good job. I am trying to understand the language. As I have told her privately and I have told her again publicly, I prefer the Specter language. But I would like to clarify a little bit what this new position, the NID position—whoever occupies it—what he or she would be able to do under the Senator's bill. If I may pose a couple of questions.

If we can start with the NGA and the whole issue of the satellites, this has been a problem in the past. We don't have to on the floor today go over the problem of the moving of satellites. I ask my colleague this. Let's say that the NID did, in fact, want to move a satellite positioned on country A, and wants to get intelligence from country Z. What ability does that person have to do that? Can you point to the specific language in the bill that would get this done very quickly?

Ms. COLLINS. Madam President, I will find the specific language to show the Senator from Ohio. I have the language. The NID would establish collection and analysis requirements for the Intelligence Community, determine collection and analysis priorities, manage and issue collection and analysis tasking, and resolve conflicts in the tasking abilities of the intelligence community. So the language is very clear that the NID would have enhanced authority to resolve the kinds of conflicts that sometimes do occur now on the allocation of satellite resources, for example.

Mr. DEWINE. So it is the Senator's feeling that—and everything is very time sensitive—in a matter of hours this person could make the decision and basically order this to be done?

Ms. COLLINS. The Senator is correct. Perhaps it will be of some comfort to the Senator from Ohio to know that the language in this regard was suggested to our committee by Senator ROBERTS and comes from his bill. There is very strong language regarding the issue the Senator has raised.

Mr. DEWINE. I appreciate that. If my colleague could answer this: In a real-world situation, when we are dealing with satellites—and we will not go into the countries on the floor—if a decision had to be made in a matter of hours, if we need this information and we need to move from here to there, could that be ordered? I am using the word ''ordered.'' I am not talking about consultation or prayer together. I am talking about ordering it. Can that be ordered? Can this person order this to be done, saying it will be done, I don't care what anybody else says?

Ms. COLLINS. As I indicated to the Senator from Ohio—and I thought I was very clear in answering his question—it says the NID can issue directions in the collection and analysis tasking. I think the language is very clear that the answer is yes.

Mr. DEWINE. I appreciate what the language is, but I want to know, for the history we are establishing today, if my colleague believes that would include the term ''order.'' In other words, a direction that this will be done.

Ms. COLLINS. The term of art is the issue. That is the correct legal language to use. It is adopted from Senator ROBERTS' bill. My answer is yes.

Mr. DEWINE. I appreciate that.

Mr. LIEBERMAN. If the chairman will yield, these are very important questions the Senator from Ohio is raising. I want to assure him, first, that we raised the same questions during our committee's deliberation, including meetings with the heads of these national intelligence agencies that are within the Department of Defense. The Senator from Ohio is undoubtedly aware of the reality, which is that the current Director of Central Intelligence has the authority under law to convene a committee, an interagency committee, which every day apparently makes, as one witness said to us, thousands of decisions about where our signal intelligence and image intelligence assets go. In fact, one of the heads of an agency said he didn't remember a time when there was an inability to agree. There is also, clearly,

in the end, both in current law, as I understand it, and in the proposal we are making, if the rare situation occurs, you have to have somebody in power to make that decision. Now it is the CIA. Under our proposal, it would be the national intelligence director.

Mr. DEWINE. I appreciate the response. I was just saying to my colleague that my understanding of the reading of recent history has been that the power has not been adequate, with all due respect, and that the history has indicated there have been times when it has not been satisfactory, the results have not been where they should have been, which would indicate to me that the status quo is not acceptable. That is why I am asking whether the new language—I am trying to understand whether the new language is a significant improvement over the status quo. We are on the floor under the understanding that the status quo is not acceptable. I congratulate my colleagues for trying to improve the status quo. I know they are working to do that. That is why I asked that question.

Let me move on to another question.

Mr. LIEBERMAN. If the Senator will yield, if I may respond. I want to refer the Senator to page 14 of our bill in section 4, enumerating the powers of the national intelligence director. We say ''establish collection and analysis requirements for the intelligence community to determine collection and analysis priorities, issue and manage collection analysis tasking, and resolve conflicts in the tasking of elements of the intelligence community within the national intelligence program, except as otherwise agreed with the Secretary of Defense pursuant to the direction of the President.''

So this is language that completely mirrors existing statute for the Director of Central Intelligence. From testimony we heard, it is fortunately working very well that the conflicts, by the testimony of at least one head of one of the agencies, just do not occur; they work it out.

Mr. DEWINE. I say to my colleague that there are Members besides myself who can privately tell the Senator that there is a history that would indicate this does not work, that the status quo is not acceptable.

If what the Senator is telling me today is this is not really much change from the status quo, then I say to my colleague that we have a major problem.

I reference the language in the old law. I think my colleague may be right, and let me read the old law, which is the status quo today, and this is the power that the head of the intelligence community has today: establish the requirements and priorities to govern the collection of national intelligence by elements of the intelligence community; next, approve collection requirements; determine collection priorities and resolve conflicts in collection priorities levied on national collection assets, except as otherwise agreed with the Secretary of Defense pursuant to the direction of the President.

Just on its face, one would think that resolving these conflicts is already given to the DCI today, and that is why, frankly, I prefer the language of the Specter amendment which talks about the director overseeing the execution of the national intelligence program and to supervise, direct, and control the operations, which to me is the key language.

I yield to my colleague.

Ms. COLLINS. If the Senator would yield on that point, I do not want the Senator to mistakenly believe there are no changes in our bill with regard to current law. There is a very critical change.

Mr. DEWINE. If I could reclaim my time, the problem is the colleague of the Senator just told me there was not much of a change at all, and this is the problem with the language: One of the Senators saying there is a change and the other saying there is not much change. That is ambiguous, which is the problem, with all due respect to both of my colleagues, who are great friends. It is the language; it is not the Senators.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Perhaps it was my language that was confusing. I do not think the statutory language is.

The fact is, there is an addition of authority to the NID—there is no question about that—that the DCI does not have, and that is to issue and manage collection and analysis tasking.

What I was trying to say earlier, and I want to distinguish this, is the current law enables the DCI to convene the agency representatives, which they do every day, to resolve and decide where our national assets go, and then to resolve a conflict, as described in the language that I read from, which is what the current DCI has.

We have added, very importantly, and the Senator is right, the ability of the national intelligence director additionally to issue and manage collection and analysis tasking.

Mr. DEWINE. Reclaiming my time, so there is a change?

Ms. COLLINS. If the Senator will yield?

Mr. DEWINE. I will yield.

Ms. COLLINS. There is a very significant change, as I said to the Senator when he first raised this very important question. We recognize that the current Director of the CIA cannot issue tasking, cannot require the collection of information, under this section of the law. That is why we took language recommended by Senator ROBERTS, included it in the bill that I believe the Senator from Ohio may have cosponsored, which strengthened that authority by adding the language, ''issue and manage collection and analysis tasking.'' That is not in current law.

Mr. DEWINE. I appreciate that. I will have to go back and study this a little bit more.

I say to my colleague from Maine, I am happy with her answer when she responded to my question, can this be ordered, and her response, I believe, was yes. In other words, under her bill the NID could order the satellite to be moved. Because I think there is a problem.

The evidence is that in the past there have been some problems—I am not saying it is a problem that occurs all the time; it probably gets worked out most of the time—but there have been some problems and I think this needs to be a situation where there has been a problem or there might be a problem, be ordered, it has to be. So I certainly appreciate the response.

Let me ask another question, if I could. Moving to the area of signal intelligence, NSA, let us say the NID, under the Senator's bill, decided it was in our national interest to move the assets, move the resources, from listening to country X to terrorist Y organization. It is the same type of issue but again a real world issue. We are moving our assets; we have to make this decision very quickly in the real world. Could that person order that to be done?

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. If the Senator would yield for a response.

Mr. DEWINE. I yield.

Ms. COLLINS. My answer would be the same. The NID has the authority, has the power, to use the words of Senator from Ohio, to issue these orders, to task these agencies to carry out these directives.

I note that because the NID has the authority to manage the budgets of these agencies, he has a pretty big stick to use as enforcement.

Mr. DEWINE. If we can just talk back and forth a minute, let me interject and then the Senator can respond. I appreciate the progress the Senator has made in regard to the budget, and I think that is very important, but we have seen from our work on the Intelligence Committee, in looking at the intelligence community, a lot of these decisions that are being dealt with in the real world, are very time sensitive so when a budget change is made, we are talking about the next year or 2 years. Those are very important. They are changing directions. That is important. So I congratulate the Senator for making that change.

I am not concerned that the Senator has not done that in her bill. The Senator has done that. What I am concerned about is the execution. For example, I see in the Specter language: direct, oversee, execute the national intelligence program. Then he goes on to say: supervise, direct, and control the operations of the Central Intelligence Agency, the National Security Agency, et cetera.

So what I see in the Specter language that gives me a great deal of comfort is

''supervise, direct, control operations.'' To me, ''operations'' is the key language because now we are dealing with things that are very time sensitive.

What I worry about is not the long-term planning. I am convinced that the Senator has taken care of that and I congratulate her for that. What I worry about is real world examples that I have now, such as we are listening to one country, or we have assets over here that we need to move very quickly over here and target a terrorist organization, and say we have limited assets, can we do that. It is a hypothetical, but could that decision be made?

Ms. COLLINS. Madam President, I think the Senator from Ohio is raising excellent, important questions in this debate, but he is creating a misimpression of what the bill does with regard to budget authority.

This is not 1 year off or 2 years off. The NID has budget execution authority, not just putting the budget together for presentation and recommendation to the President; he executes the budget as the year goes by. He has strong authority to reprogram funds with congressional approval and notification, I hasten to say, and to transfer funds.

He has extensive authority to transfer personnel. He has the right under our bill to appoint the heads of these agencies with concurrence from the Secretary of Defense. That is a major change from current law.

If the Senator from Ohio is saying, as he is, that the NID should have direct line authority over the day-to-day operations of these combat support agencies, I disagree with the Senator from Ohio. I believe it does not make sense and, in fact, the NID could not handle running these agencies day to day. As Senator LEVIN indicated earlier, you would have to create an enormous supervisory staff within the office of the NID if you were going to transfer that authority from the Secretary of Defense. Clearly, the NID has the authority to direct the collection and analysis of information by the heads of these agencies, but I do not think he should be running them day to day.

Mr. DEWINE. If I could follow that up with a question, since the Senator raised it—and I think I know her answer, but I want to make sure I do understand her answer—talking about moving people around, according to the newspapers—this is what is published in the newspapers—there is a problem with a backlog apparently in listening to tapes of intercepts, at least that is what has been in the newspaper. Would the NID have the authority to move linguists from one agency to another to correct that problem? For example, if they had to, they could move them from the DIA to the CIA?

Ms. COLLINS. Absolutely.

Mr. DEWINE. This person, he or she, could pick up the phone and say: We are going to move 50 people, 100 people from over here to over there?

Ms. COLLINS. Absolutely.

Mr. DEWINE. This person does not have to call the SECDEF, does not have to do anything?

Ms. COLLINS. If the Senator will yield so I can respond to his question.

Mr. DEWINE. Surely.

Ms. COLLINS. There is very strong authority for the NID to transfer personnel who are working within the national intelligence program throughout the Federal Government and, indeed, I would envision the staffing of the National Counterterrorism Center would come from the NID taking linguists, analysts, operatives, collectors—all sorts of expertise—from the various intelligence agencies. And I know for a fact we need to give the NID that power because I visited with the head of the Terrorist Threat Integration Center who does not have that power and finds it very difficult to get the personnel resources he needs.

Mr. DEWINE. I appreciate the answer. So the Senator is saying this person can actually go in to DIA and say: I want those people. I want them. We are going to take them from DIA, and we are going to put them over here at CIA because I know best what the priorities need to be, and this is national security, and we are going to get it done.

Ms. COLLINS. Will the Senator yield for a response?

Mr. DEWINE. I certainly will.

Ms. COLLINS. The DIA employees who are part of the national intelligence program, yes, the answer is yes. DIA employees who are part of DOD's tactical intelligence programs, which are outside the scope of the authority of the NID, the answer in that case would be no. So it depends. But if they are part of the national intelligence program, which thousands of DIA employees are, the answer is yes.

Mr. DEWINE. I appreciate that. What I do not understand, though, is what I thought I heard earlier on about the Senator's distinction between tasking and control. That does sound like control to me. The Senator from Maine is saying they can task but they cannot control. Basically, that sounds like control to me if you can move someone.

Ms. COLLINS. I disagree with the Senator, so I do not know how to respond. I was saying the NID does not run the day-to-day, daily operations of the NSA, for example.

Mr. DEWINE. And I appreciate that. But in direct response to my question, the Senator is saying that person could, in fact, make that command decision, pick up the phone and say, ''We are moving 50 people,'' and that would be done, and that would be it. I want to make sure on the record because I think it is going to be very important 2 years from now or 18 months from now, and I would hate for the NID person to come before our committee and say: ''I can't move people around.''

Ms. COLLINS. If the Senator will yield for a response.

Mr. DEWINE. I am happy to yield.

Ms. COLLINS. Madam President, I direct the Senator from Ohio to the exact language in the bill. On page 27, starting on line 21:

(C) in accordance with procedures to be developed by the National Intelligence Director, transfer personnel of the intelligence community funded through the National Intelligence Program from one element of the intelligence community to another element of the intelligence community;

I think that language is crystal clear that the NID could, indeed, take a linguist from the counterterrorism division of the FBI and transfer that individual to the National Counterterrorism Center, or an analyst from DIA who is funded through the national intelligence program and shift that individual to the counterterrorism center. I think it is very clear.

Mr. DEWINE. I thank my colleague from Maine for answering these questions. As always, she is very eloquent and has been very thoughtful in her questions and her work on the bill. I congratulate her for the good work she has done.

Madam President, I do appreciate my colleague's answers. I will be voting in favor of the Specter amendment simply because I think it is more clear. I think it adds something to this bill. I think it makes it more specific. It is clear. When we are done with our work, then it will be up to the great bureaucracy, the men and women who are out there to defend us—and I do not use ''bureaucracy'' in a derogatory way at all; these are great people doing wonderful work out there who are defending us—it will be up to them to make this work. We have an obligation to do our best to give them something that will work and to give them the language that will allow the clearest lines of authority.

I believe if you take the Collins-Lieberman bill, which is good work, and you then add the Specter amendment, the Specter amendment makes it clearer, makes it more precise, and makes the lines of authority much easier to understand.

I believe it also will deal with a concern I have had for a long time, as we saw this reform coming, and that is my fear that we would create this new position, give them authority, and do a pretty good job, but not quite give them all the authority this person needs.

We have had the opportunity in the Intelligence Committee to listen to some of the things that have gone wrong for the last few years, and there have been a lot of things that have gone wrong. It is not only organization. It is not only line authority. It is not only the fact that the DCI did not have enough power, but that is part of it. This bill goes a ways to deal with that. I believe the Specter amendment improves it further and makes it clearer, and is the right way to go.

Somebody has to be in charge. The buck has to stop somewhere. Never

again do we want to be in a position where it is not clear who is in charge. Never again does this country want to be in a position where the top person in intelligence doesn't have all the authority he or she needs to protect us, to protect our children, to protect our families. The Specter amendment will make it very clear where the buck stops. The buck will stop with this person whom we are now calling the NID and who is called the NID under the Collins-Lieberman bill. So I will vote in favor of the Specter amendment. I urge my colleagues to vote in favor of it as well.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. I wonder if the Senator from Ohio would address a question which his question raised in my mind, having spent a lot of time trying to figure out what the line is, in terms of supervision and control. Let me put the hypothetical this way. I would also appreciate the managers perhaps listening to it as well.

We have a new national intelligence director. The first question the Senator from Ohio asked, the first that I heard, at least, was: Can that director direct, order—in the words of the chairman, ''task''—the collection, let's say, of signals intelligence in Iraq instead of Afghanistan? Can he or she make that decision?

We only have certain resources. We have to allocate them. Can that director, after consulting, presumably—because these are day-to-day consultations, as the Senator from Connecticut says; these go on every single day, these decisions on allocations and priorities. But hopefully, after going through that process, can that NID, that director, say: OK, folks, I have heard it; we have to make a decision. We are collecting signals in Iraq; we are not going to do it in Afghanistan.

The chairman's answer was ''yes.'' It seems to me that ought to be very reassuring to folks.

The next question is, should that director be responsible for deciding which airplane it is that is going to do the collection? My good friend from Ohio says no, I think, shaking his head no. But that is what is left to the day-to-day operations. That is why you need to leave that decision on which airplane is going to go over Iraq to the day-to-day operational decisions inside of that agency. You can't transfer all of those decisions to a NID. That is where I think the Senator from Ohio would draw the line, I hope. That is clearly where I draw the line.

Mr. DEWINE. If I could respond?

Mr. LEVIN. I am happy to yield.

Mr. DEWINE. My colleague and I have, I think, the same objectives. My colleague from Maine and I have the same objectives. I think our differences are, frankly, down to what language accomplishes this. I think, also, I have more skepticism and bring to the table maybe more skepticism about how the world works. I am usually the optimist. But on this I am skeptical about the ability of this new position, someone whom we are now throwing into a newly created position, to be able to drive his or her agenda. I am concerned about it. I think it is a concern based on reason. There is a reason to be concerned about it, knowing the bureaucracy and how it works.

I think the Specter language is more clear, it is more precise: Supervise, direct, control operations. That doesn't mean picking planes or worrying about the day-to-day activities. That is not how I interpret it. It is not how I interpret it.

Mr. LEVIN. If the Senator will yield, I don't know any other way you can.

Mr. DEWINE. It is your time.

Mr. LEVIN. If the Senator will yield to respond, and I don't want to interrupt, but that is exactly what the words ''controlling operations'' mean. That is what the word ''operations'' means.

I think the Senator from Ohio is correct in pressing for clear answers to the wording in the bill. There are plenty of places where I have some similar questions which I will be raising by amendment, but I don't think this is one of them. I don't think this is one of the places. Because I think the bill is clear here that when the NID issues collection tasking, that is exactly what the Senator from Ohio wants, is to issue collection tasking, I believe.

But what I believe the Senator from Ohio does not want is to control the day-to-day operations as to how that task will be carried out. Yet that is what the Specter language results in.

Rather than clarifying this issue as between the order or the task, and how you are going to carry it out, it blurs the issue. Because once the Senator from Ohio says it is not his understanding of the Specter language that the operations which will now be assigned to NID include the day-to-day operations, then where is that line drawn? If it is not the day-to-day operations, if you are truly shifting those agencies to the responsibility and control of the NID, of course he is responsible for the day-to-day operations. Where is the line, where is the operations point divided between the NID who controls operations under Specter and the operations not controlled by the NID, under your understanding?

Mr. DEWINE. If I can respond, I understand my colleague's point. It strikes me that we have come a long way in this debate and the evolution of this bill. I think we have gone in the correct direction. I look at where we were 2 months ago or 3 months ago in this debate—it is all for the good. When every one of us speaking on the Senate floor, all four of us who are down here at this moment are basically saying we want the same thing and what we are now debating, I believe, is the language to get there. I think my colleagues, Senator LIEBERMAN, Senator COLLINS, my colleague from Michigan, would agree we are saying basically we want the same thing. I think that is good.

We are going to vote different ways on the Specter amendment, but I think this is progress because there is a consensus that has emerged that we want this head of intelligence in this country to be accountable, to have the control that person lacking them has, so the buck will stop with that person, so when they come in front of our committee we can't hear the excuses. It is going to be a great improvement.

I congratulate my colleagues for the great work they have done. I think this debate we have had here for the last 45 minutes has been a very good one. I think we have clarified some things and we clearly clarified, at least in my mind, the intent of the authors of this bill.

I think we created some interesting legislative history about what the power of this person should be. There should be no doubt in any person's mind in the future, NID or anyone who has to deal with him, what their powers should be in this area. I think that is all for the good.

I thank my colleague and yield the floor.

Mr. LEVIN. I thank my friend from Ohio.

In closing, I do have some questions about certain words in this particular paragraph which I will raise later on the floor, relative particularly to the establishment of requirements, because I think the consumer must establish the requirements and not the NID. I think there is also an issue about analysis, because I think we ought to be promoting greater numbers of analyses, and not getting into group-think. We should be promoting independent, objective analysis and I think this wording probably or unintentionally could concentrate or centralize that in a NID.

I think that is an unintended result, but we can discuss that later. But on this one issue that is raised in this amendment, it seems to me this amendment goes exactly in the direction all of us want, which is we need somebody to make a tasking decision, to have that power, and to do it exactly as our friend from Ohio said. You can't at a critical moment have that confused or diffused or uncertain. If something has to be done quickly, someone has to make a decision, and the person who makes a decision in this bill is clearly the NID on the tasking of the intelligence. That is where the decision, it seems to me, has to reside.

But again, I think the Specter amendment, because it goes into the operational side after the task is issued, goes too far, and rather than clarifying an issue will put the responsibility purportedly on somebody who can't handle that responsibility, who doesn't have the horses to handle that responsibility inside of his agency, unless you recreate the entire Department of Defense almost inside the NID

in order to carry out those day-to-day operations to effectuate the task collection which properly belongs with the NID.

Mr. LIEBERMAN. Madam President, before the Senator from Ohio leaves the floor, I want to thank him. Although we disagree on the Specter amendment, his questions have illuminated the details of the underlying Governmental Affairs Committee proposal in a way that I as one of the sponsors feel shows a balance, which is we are trying to do something the 9/11 Commission says we urgently and desperately need to do, which is to fill the gap where the Commission said there is no one in charge of America's intelligence today—a lot of great assets but no one in charge. It is like an army without a general or a football team without a quarterback.

So we are creating a national intelligence director. We are giving that position, that strength, which the current director of Central Intelligence doesn't have. We are separating that position from the Director of the Central Intelligence Agency. But we are not giving the director line authority over the constituent agencies. He is going to be there to call the plays, if you will, to resolve conflicts, to make sure all the assets of the intelligence community—here we do have totally shared goals—are serving the national interest and all of the customers of the intelligence community and, most importantly, serving the President of the United States who represents the national interest, but not in control with line authority over the constituent agencies.

As has been said, we think that will make, and the 9/11 Commission said it will create, a top-heavy organization. We don't need to do it.

I am quoting Secretary of State Powell's statement which he made to us on September 13 when he testified at a hearing. He said:

The director of central intelligence was there before but the DCI did not have that kind of authority.

I add parenthetically that is the authority we are giving the national intelligence director.

Colin Powell said:

In this town, it is budget authority that counts. Can you move money? Can you set standards for people? Do you have the access needed to the President? The NID will have all of that. I think this is a far more powerful player, and that will help the State Department.

There is a substantial transformation of what exists now. But it doesn't remove day-to-day control over operations from the individual departments. It is that balance that is part of the strength of our proposal, I submit to my colleagues. There are those on both sides who are unhappy about our balance. Senator SPECTER is stating it much too simplistically and we didn't go far enough to give power to the NID, so his amendment would effectively create a secretary of intelligence with line control over all the constituent parts of the intelligence community.

There will be other amendments from people who feel we have gone too far, particularly with regard to the Department of Defense, because in fact we do change budget control authority from the Department of Defense to the national intelligence director, to strengthen that position for exactly the reason Secretary Powell says, acknowledging that the intelligence director serves the President and the entire Government insofar as Government agencies need good intelligence, including the State Department. And the Secretary effectively said to us, he explicitly said, he is confident that the State Department will get more and better intelligence which it needs to advise the President on the conduct of our foreign policy. It is critical. Obviously, the needs for the Defense Department and warfighters are also critical, but they are not the only ones who need intelligence in our Government. The new director will, I think, better be able to satisfy all of those customers for the best possible intelligence.

I think it has been a helpful debate. I hope our colleagues who are not on the floor are keeping an ear to the debate, or at least their staff is, because it reminds me of some of the debates we had in the Governmental Affairs Committee which ultimately led us to a point where there were many disagreements along the way, with almost 50 amendments filed, where the bill was reported out of committee on a nonpartisan vote, unanimous vote.

I don't have explicit hopes that will happen in the full Senate, but I look forward to as thoughtful an exchange as we have just had, leading to a resounding vote for the kind of transformational reform of our intelligence community that the 9/11 Commission recommends, which we all know is desperately needed as soon as possible to better protect the American people from the clear and present danger of terrorist attacks.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. TALENT). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STEVENS. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. STEVENS. Mr. President, is there any time limit on speaking right now?

The PRESIDING OFFICER. There is no time limit.

Mr. STEVENS. There is a vote set for 2:15?

The PRESIDING OFFICER. That is correct.

Mr. STEVENS. Mr. President, I come to the Senate to make extensive remarks on this bill. I do so with the full realization that my schedule prevented me from attending the hearings of the committee on which I am a member, chaired by Senator COLLINS and the ranking member, Senator LIEBERMAN. I commend them for their activities through July and August with the hearings they conducted. During that period of time, the Senator from Hawaii and I were in a parliamentary conference with the Chinese National Peoples Congress, and we had other events that prevented us from being in Washington while they conducted the hearings.

I preface this to say I voted for the bill to come out of the committee, but at the time I stated specifically to the managers of the bill that I would have some amendments in the Senate and whether I voted for the final passage of this bill would depend upon the outcome of some of those amendments.

Let me also say in this preface to my comments that as the staff reports were prepared by the 9/11 Commission, and my staff delivered those to me from the Internet and I read those—I also read the report when it first came out—and then, on the increased pressure that came from the members of the former 9/11 Commission to have early consideration of this subject, I reread the report and formed some very fixed opinions about this subject.

I have never seen members of a Commission, which went out of existence upon delivering the report, lobby the Congress so hard. My understanding is they raised a considerable amount of money, rehired some of their staff, and are currently lobbying the Congress. I do hope they have complied with the lobbying laws. In any event, this pressure has been significant and it is compelling the Congress to judgment in a very short period of time, in my judgment.

As I said, I have read and reread the 9/11 Commission Report. Last week, our Appropriations Committee held hearings on the report recommendations. We did that because when I returned to Washington I found there was a series of people who indicated they had not been heard by the Governmental Affairs Committee who wanted to have an opportunity to present testimony to the Congress.

We heard from Dr. Henry Kissinger; from three former military commanders in chief: GEN Joe Ralston, U.S. Air Force, retired, former commander of the U.S. European Command and supreme allied commander of Europe and NATO; ADM Dennis Blair, U.S. Navy, retired, former commander of the U.S. Pacific Command; ADM James Ellis, retired, former commander of the U.S. Strategic Command. Our committee also heard testimony from Dr. John Hamre, president and CEO of the Center for Strategic and International Studies and former Under Secretary of Defense. We heard from Judge Richard Posner of the Court of Appeals for the Seventh Circuit, and Dale Watson, former Executive Assistant Director of Counterterrorism and Counterintelligence for the FBI.

Our committee spent 2 days listening to the testimony on the 9/11 Commission's recommendations. Each witness who appeared was an expert in his field with years of dedicated service to the Nation. After listening to their thoughts and suggestions, I have come to the conclusion we have only begun to scratch the surface for what needs to be considered by the Congress before we finally act on this subject.

Copies of the hearings we held before the Appropriations Committee have been given to every Senator and to all intelligence-related staff of the Senate. They are available to anyone who wishes. They were printed as a public document.

Since the passage of the National Security Act in 1947, at least 19 commissions, committees, and panels have made recommendations aimed at reorganizing our Nation's intelligence community. Those proposals have led to changes in internal agency direction, precedence, or directive, and to new statutes, but none of those reports were adopted in their entirety or in this type of timeframe or context.

During last week's hearings before our committee, Senator INOUYE asked whether it would be wise for Congress to make a decision about restructuring the intelligence community in the next 2 weeks. Judge Posner, who is a very erudite professor of law at the University of Chicago in addition to being a Federal circuit judge—he also recently authored a very thoughtful article on intelligence reform in the New York Times—testified he thought it would be ''unwise and most unfortunate.'' He expressed doubts that the analytical problems could be resolved in that timeframe and expressed concerns that the Presidential campaign and politics should not be the right setting for this reform.

I agree with Judge Posner. However, I have approached this legislation as a committee member with an open mind, and I am hopeful that the Senate will move forward on some reforms during this year.

I do have concerns about current efforts to restructure the Nation's intelligence community. For starters, the witnesses I heard last week revealed serious issues with the underlying document for these efforts. That was the 9/11 Commission Report. The Commission's recommendations do not reflect their own account of what happened on September 11. As Judge Posner said before our committee:

> The first 338 pages of the commission's report are an extremely detailed and thorough narrative of the background to the attacks themselves, and the immediate response.
>
> It is a very fine job. . . . Then after that, the commission goes off on what is really a different tangent in considering organizational change because it is not clear, from reading their narrative, that the problems were organization[al] problems for which organization[al] solutions or reorganization would be indicated. So I think there is a mismatch between this very detailed narrative and a rather more summary discussion of organizational change that really does not match the problems that the report itself had identified.

That is the end of Judge Posner's quote.

Because the Commission's recommendations are somewhat divorced from its own account of what happened on 9/11, the Commission adopts, in my view, a flawed vantage point from which to suggest reforms. For example, one of the concerns Judge Posner expressed in our hearings last week was that the report—and again I quote—

> . . . really is oriented toward preventing not new threats, but a repetition of 9/11. Now, an exact repetition of 9/11 is extremely unlikely because that has already happened. We know about that. What I think we have to worry [more] about [is the threat of] biological terrorism, nuclear terrorism, agricultural terrorism because, you know, destruction of agriculture by biological weapons could be as destructive as biological warfare against people. So we ought to try to think about the disasters that have not happened, but that is very difficult to do, so we tend to think about what has already happened.

That is the end of Judge Posner's comments about that.

As we debate this legislation, one of the things we must keep in mind is there have been substantial changes in our intelligence-gathering methods and operations since 9/11. We personally witnessed those on trips to Afghanistan and Iraq during this past year. The situation we faced in the morning of 9/11 is not the situation we face today, and the threats, although related, are not identical. Efforts to reorganize the intelligence community must take into account the current state of operations and the broad scope of the risks we face. We cannot be mesmerized by just one threat.

As I said, I am not opposed to intelligence reform. But any changes should reflect the current context of intelligence. Since 9/11, many members of the intelligence community have testified before Senate committees, and they have told us they are doing things differently, that today there is a free flow of ideas that did not exist before 9/11. Congress should not take any action that might—intentionally or unintentionally—stifle that progress.

I support many aspects of this legislation. I am in favor of the creation of a national intelligence director who can serve as the President's primary intelligence adviser. I also support the creation of a national counterterrorism center. However, I am very concerned about the way the NID's role is defined in this legislation. I urge Members to read it. Read it. Look at the pages. There are nine and a half pages that describe the powers of this person. It would do well for people to understand what it says, what the real context of this is. This person is going to be a very unique individual. What I fear is, this person is going to assemble underneath the NID a series of staff people who will be telling other people what to do based upon their understanding of what the director of NID intended to do. Quoting from the bill:

> The National Intelligence Director shall—
>
> determine the annual budget for the intelligence and intelligence-related activities of the United States by—
>
> providing to the heads of the departments containing agencies or elements within the intelligence community and that have one or more programs, projects, or activities with the National Intelligence program, and to the heads of such agencies and elements, guidance for development [of] the National Intelligence Program budget pertaining to such agencies or elements. . . .

It goes on, all the way through. The national intelligence director is in charge of preparing the annual defense budgets, including those for the Department of Defense related to military intelligence programs, with the concurrence of the Secretary. He would be in charge of ''collection and analysis requirements'' for the entire intelligence community. He is going to have to ''provide advisory tasking on the collection of intelligence to elements of the United States Government having information collection'' activities. He will have the right to go to any Department or agency of the Federal Government and say, ''What are you doing?'' and have access to their information. He will ''manage and oversee the National Counterterrorism Center,'' which, again, I say, I do believe in that type of center, but can he manage that and be a director at the same time?

I urge the Senate to look at the job description of this one person. No person on Earth can do all those things. What he is going to do is assemble a whole series of subordinates who will tell the existing agency heads, many of whom are constitutional officers, Secretaries, confirmed by the Senate, to perform the functions of their Department. But this person is going to have assistants telling those Secretaries what to do and demanding they have access to information those Secretaries have collected through their own processes. Now, I think, if you read this, this is an enormous task for any individual. An NID is needed, but that type of bureaucracy that is set up by this bill is just overwhelming.

He also ensures ''that appropriate officials of the United States Government . . . have access to a variety of intelligence assessments and analytical views,'' protecting ''intelligence sources and methods,'' establishing ''requirements and procedures for the classification of intelligence.''

He is a czar, one person. Now, we know not one person can do all those things. This means to me a new level of bureaucracy, an appointed level, not described in this bill at all. But he is going to have a series of people working for him. I am told there will probably be 800 people in this office of national intelligence director. There is the flaw. There is the flaw, and the President's letter yesterday mentioned it.

This legislation also gives the NID authority to set security, personnel, and informational technology standards all the way across the intelligence

community. In other words, no matter whether you are the FBI, CIA, or DIA, you must follow the standards set by the NID to do your business. Unheard of, just unheard of.

This also includes the establishment and direction over information sharing. This person alone will determine who shares what information. Now, I believe this effort will create more problems than it solves. Judge Posner, again, addressed this in his testimony to our committee last week. He said:

> The commission thinks the reason the bits of information that might have been assembled into a mosaic spelling 9/11 never came together in one place is that no one person was in charge of intelligence.

He means at that time. But he said:

> That is not the reason. The reason, or rather, the reasons are, first, that the volume of information is so vast that even with the continued rapid advances in data processing it cannot be collected, stored, and retrieved and analyzed in a single database. . . .

That is an objective of this bill. Anyone in the industry will tell you it is not possible yet.

> Second, legitimate security concerns limit the degree to which confidential information can safely be shared, especially given the ever-present threat of moles like the infamous Aldrich Ames.

Now, Mr. President, still quoting Judge Posner:

> And third, the different intelligence services and the subunits of each service tend, because information is power, to hoard it. Efforts to centralize the intelligence function are likely to lengthen the time it takes for intelligence and analyses to reach the President, reduce diversity and competition in the gathering and analysis of intelligence data, limit the number of threats given serious consideration and deprive the President of a range of alternative interpretations of ambiguous and incomplete data—and intelligence data will usually be ambiguous and incomplete.

That is, again, the end of Judge Posner's comment.

Giving the NID information-sharing authority may actually prove to be counterproductive. The implications Judge Posner raises need full debate and discussion. I hope we will have some of that today. At the very least, we cannot assume that Congress has rectified this problem by simply vesting information-sharing authority in one individual, only one individual, because that is the process for information sharing.

What if, in a later administration, the NID wants more centralized control? What if that person shares the viewpoint of the prior administration that there should be walls between these agencies? He will determine when they learn what is going on between one agency and another. That is the implication of what we are hearing here. We took down the walls with the PATRIOT Act. We said no more walls. Yet here is one person who determines the total rules for sharing. And probably under the current atmosphere, the return to the walls is impossible, but this authority does not prevent walls.

There is no limit on the NID's concept of sharing. That person alone will determine what sharing is between agencies and who gets the information and who has access to it.

I am also concerned about the language in this legislation concerning the structure of the office of NID. I mentioned that before. We don't need to create a new bureaucracy here, and it seems to me this legislation risks doing just that. We need to delete or significantly revise the parts of this bill that delve into unnecessary or excessive detail about the organization of the office of NID. Again, I call the attention of Senators to the bill itself. It has greater detail concerning specific authority for one individual than I have ever seen.

The Statement of Administration Policy, dated September 28, specifically addressed this issue of creating ''a cumbersome new bureaucracy'' or ''legislated mandated bureaucracy will hinder, not help, in the effort to strengthen U.S. intelligence capabilities and to preserve our constitutional rights.''

Continuing from the administration's letter:

> The Administration urges the Senate to delete or significantly revise these problematic provisions.

We will have amendments to do just that at a later time.

I believe we must take time to carefully consider the people in the field now and how this legislation will impact them. I recently had occasion to meet with the chiefs of station of the CIA from around the world. I was most impressed with what they said about how long it takes to establish a position as a chief of station and how long it takes to develop assets who have the willingness and the ability to go into a neighboring country or in the same country they are in and try to obtain the information we need about developments that might threaten our future.

Currently there are 175,000 persons working in the intelligence community. One hundred fifty thousand of them are military personnel today. They do an incredible job with much personal sacrifice, many under difficult circumstances and far away from their families for years. The creation of the NID will have serious consequences for them and the Department of Defense intelligence personnel. The consequences for the Department of Defense intelligence personnel must be carefully considered as we adopt these reforms.

I don't believe you can alter one piece of this puzzle without having an impact somewhere else. I am concerned not only about the impact the legislation will have in terms of unintended consequences of the big picture but also the impact it will have on our career intelligence operatives who are working out in the field today.

I hope to go on to that later. We had a gap in our development of human intelligence, and it was a serious gap for a series of years. It takes more than 5 years to develop one of these people. Now we are operating with a group of human intelligence experts which is very limited.

This legislation says the NID will ''establish intelligence collection and analysis requirements for the intelligence community.'' This arrangement will centralize the prioritization and control of intelligence and, I believe, could detrimentally affect military leaders outside Washington, DC.

The NID would inevitably focus on the current crisis in Washington—I assume, this doesn't say anywhere, that NID will be here, somewhere near the President—possibly shortchanging the long-term collection and analysis needed for intelligence preparation for battlefields in distant regions.

Currently there is a diversity within intelligence. I do believe in a NID, but I believe in more of a coordinator than a commander. This creates a new commander in chief of intelligence. The Constitution didn't create one. I do believe this is a very difficult proposition the way it is described, what the powers and authorities will be.

When combat occurs, intelligence could swing into full force to support the troops, but by then it would be too late. We need a consistent peacetime intelligence effort to ensure that we can either avoid conflict or give U.S. forces high-quality information when they must engage an enemy.

I am also concerned about the nature of the NID position. Right now we have one agency that deals with domestic threats and another that deals with foreign threats. There are reasons for this division.

Domestic and international threats are distinct and require different intelligence tactics and strategies. The NID collapses international and domestic intelligence concerns into one position, one control, one definition authority, and one access authority. I do believe that this is the kind of situation Judge Posner warned us about last week where we would have an intelligence community that is too rough on our citizens or too gentle with foreign threats because it needs to adhere to uniform policies across the domestic and international context. If that is not the intent, the bill should so state.

There is a reason for different approaches to foreign threats than those that are internal within our constitutional authorities. I believe Judge Posner's warning ought to be listened to by the Senate. We do not need an intelligence community that is too rough on our own citizens and too gentle with foreign threats.

I believe the NID position should reflect what Dale Watson, another witness before our committee, recommended last week. He has a long service in the FBI intelligence division. This was his judgment:

> This position must be a job and not a position. The individual who has this responsibility of being the NID needs to work within the NID and within the intelligence community. The NID should not be a public relations job. The NID should not be on the

speaking circuit or conducting liaison. The NID should be a central-focused individual that looks at where [we] are across the board in all areas. . . . I think the NID ought to be a term appointment. I think the NID has to have the responsibility and be able to do the task.

What we are really saying is, Congress should not rush to implement the recommendations put forth in the 9/11 Commission report. For my part, I hope to spend more time in the Chamber listening to my colleagues and exchanging views on this legislation.

As of now I am inclined to support a course that creates a national intelligence director and a national counterterrorism center, gives them 6 months to get up and running, and then invites them to come and tell those of us in Congress who must make the final decision what additional authorities and changes they actually need. This director ought to become familiar with what we have now before he tries to fix it.

That is one of the things we learned as young men, I thought. If the watch is running and it works, you ought not to try to fix it until you know that there might be some way you can improve it.

This situation is just the opposite. I do think we ought to look forward in this week to a debate that is one that will be productive so that the changes in the administration's letter we received yesterday are not only listened to but they are accommodated to the maximum extent possible.

I have a series of questions that I want to read into the RECORD. These are questions I intend to ask the managers of these bills as we go through this process. It is a long list of questions, I will say. The first is in regard to military personnel.

Based on the fact there is no differentiation between civilian and military personnel in your bill, could the NID have the power to hold military personnel for more than their stated rotations, more than their career path that they are on? For example, could they hold a military person at the National Counterterrorism Center longer than is detailed from the Department of Defense? If they could, what is the effect on their ability for promotion in the future? If needed for a military mission, how would the Secretary of Defense or one of the service chiefs be able to have that military individual returned to a nonintelligence program or position?

Is it true that once in the NID, the NID has control over the individual person's future, particularly when, I remind the Senate, again, 80 percent of the people we are talking about are Department of Defense people, most of whom have career programs, are on a career path, and part of that path involves being an intelligence official for a period of time?

Also, based on the educational requirements designated for personnel in the national intelligence program by the national intelligence director, how would this be reconciled for those military personnel who must complete military education courses for the advancement of their careers?

Periodically, particularly the officers, and some noncommissioned officers, must complete additional military education courses in order to move upward, have upward mobility in their particular service.

Also, how much control would the DOD have over military personnel assigned to the NID? Would the NID control their assignments and their careers? How would the NID ensure that they have the requisite training and assignments to remain competitive for promotion within their parent military service? What role does the Secretary of Defense have in meeting the statutory responsibilities in title 10 and title 5 for the Armed Forces personnel?

I have heard comments that this new national intelligence director organization could, as I said, be in excess of 800 people. If that is true, it would seem that this legislation will create a new bureaucracy to deal with intelligence.

So I asked the managers directly, how large will the national intelligence director organization be? Does the NID have unlimited ability to hire people? Where would the personnel for such a structure come from? There is already a shortage of intelligence people in the intelligence community. Where are these people going to come from? Is he going to take them from the CIA or the DIA? And if he does, do they lose their career path? Is everybody subject to the control of the NID? Can he tell them you must come? I thought intelligence was a volunteer organization. I think it must be if we are to be successful.

Why does this legislation single out the FBI for the NID's ability to fix the rate of pay? This bill gives only the NID the power to fix the rate of pay for the FBI and the intelligence section. Why doesn't it extend this to all personnel involved if he is to be so powerful? It seems to be a very strange section.

The number of qualified personnel in the intelligence field is fairly limited. Will the creation of the NID and this organization dilute the numbers? How long would it take to build and to grow the additional numbers if they are required in order to create and fulfill the obligations of the director under this reorganization?

I have some questions about the Department of Defense directly. If the national intelligence assets are transferred to a new national intelligence director, how do we ensure to our military commanders that national assets will be reliably available to them before a conflict? They have control under this bill when the conflict comes, when they have the right to obtain their own intelligence. How will the Department of Defense relate to its defense support agencies, such as the NRO, National Reconnaissance Agency, or NSA, or the National Geo spatial-Intelligence Agency, NGA, if they are effectively under the national intelligence agency? Will they still be combat support agencies, subject to the military leaders, as they are now—the Joint Chiefs of Staff and the Secretary of Defense? Where does this fit in? Will the NID have the power to convert current military positions into civilian positions? Where does he recruit from?

Within this bill, I would like to have an answer as to whether you have altered the definition of ''joint military intelligence programs.'' I do not see such a definition, but it is a very important segment of intelligence.

As to the budget, am I correct in understanding the NID controls the budget of the NSA, NGA, NRO, and that the NID recommends nominees to be directors of these entities, with the concurrence of the Secretary of Defense? What happens to the current directors? Is this some time off in the future? Can he immediately clear the deck and put new people in charge of the agencies? These agencies, along with DIA, are both national and combat support agencies. How will the proposed bill ensure these agencies remain responsive to the military forces they support if their funding and personnel are controlled by another department?

How does the National Security Advisory and Office of Management and Budget fit into the overall role of coordination or budget coordination envisioned by this legislation?

Particularly, how would the national intelligence director, with strong budgetary and personnel authority and the ability to control the dollars, 85 percent of which are now controlled by the Department of Defense, still maintain a relationship with the DOD? Does it control the whole 85 percent or just the part that is related to the defense agencies specifically mentioned? Currently, I assume the committee knows that the payroll for all of those people comes through the Department of Defense. This assumes, I take it, that the payroll will now come through the budget of the NID. Which ones are you going to pay? Who will make the separation, the Secretary of Defense or NID, as to which ones NID pays and which ones the Department of Defense pays? That is going to be a headache, in my opinion.

The bill provides the national director, in terms of an organization, with the power to reach into other departments to manage personnel, budget, and acquisition programs. Is this on a day-by-day basis, or on the basis of a plan or the formation of a divide-and-command authority? It seems to be that. It seems to be an invitation for turmoil that will cause operational problems as soon as it is created. He is supposed to reach in and tell them I will manage your personnel, your budget, and your acquisitions? A series of things is on the books that envisions particular acquisitions by various agencies over the period ahead. Some of those laws, apparently, will have to

be changed if this person's authority is to be effective, because it will conflict with existing laws, if they are not changed.

How do the benefits of centralization of the intelligence function impact the benefits of diversity and competition in the production of useful intelligence? Does the committee believe that diversity in competition is not needed and that is intended by this bill?

Is it possible to link the national intelligence director to the National Security Council and place it under the control of the national security adviser? Is that possible? Today, the President is in control of those entities within the executive branch, and they are personally responsible to him. That is what the letter we received yesterday says. I hope we think twice about the lines of authority and what are the prerogatives of the President as Commander in Chief and as President of the United States under the Constitution.

Currently, national intelligence priorities are established by the President and the National Security Council. Does a national intelligence director with such powers weaken the NSC process and the roles of the National Security Adviser and the Secretary of State? Will they still have the same role, notwithstanding this national intelligence director is going to have the authority to tell them and make the decisions on what intelligence they need in carrying out their authorities as constitutional advisers to the President?

Could some of the objectives sought by the reorganization be achieved by strengthening the existing institutions? I am not sure that has been considered adequately. That seems to be the compelling rush of the 9/11 Commission—throw everything out and set up something new. There is not even a period for transition in this process. This cannot happen overnight. The reorganization proposed by this bill would take at least a year. During that process, what happens to careers and to people's morale? Why can we not build on what we have, rather than creating something so new that has the extreme power to invade every agency that even touches any piece of intelligence?

Does this legislation create a system in which intelligence is reported to two masters? For example, would the members of the intelligence community be under the control of the national intelligence director and their own agency bosses? I assume that is the case. How does it work on a day-to-day basis if they are not? I assume persons employed by one agency are responsible to the person who hired them. This bill now envisions, I take it, that the NID has the right to hire and fire in any of the agencies involved.

Will the system envisioned by this legislation create conflicts in collection and analysis tasking? Currently, there is a working relationship between these agencies as to who is going to pursue one subject or another, as they task the analysis of information coming in on a daily basis. I don't see why the system creates other conflicts in that process.

The 9/11 Commission report highlighted that there was a lack of information sharing within the intelligence community. But evidence points out this was just as serious within agencies as it was across agencies. How can problems of sharing within agencies be solved by layering another set of controls over all of the agencies?

We ought to think about what happens to the agencies that exist now and how they should transition into this national intelligence director realm, and not assume it is automatically created as soon as the bill is passed.

Would the national intelligence director's role in crafting intelligence policy supplant that of other Cabinet Secretaries? Under this bill, would the Cabinet Secretaries lose their own organic capability to do intelligence analysis? Are we telling the Secretary of State he cannot hire somebody to do intelligence that he thinks he needs? If so, would this undercut Cabinet Secretaries who are constitutional officers of the Government charged with managing the instruments of foreign and security policy for the country?

I do not think we should proceed to create a national intelligence director that has the power to tell those Cabinet Secretaries what they can do in terms of gathering intelligence and analysis.

How would these same Cabinet Secretaries fulfill the constitutional authority vested in them by Congress unless they have the power to make an independent judgment about what is the proper conclusion from the intelligence available to them?

Could the national intelligence director function without having the analytical branch of the CIA placed under his or her direction? I say that again, the only analytical branch we really have is the CIA, and this bill seems to say that the NID gets that analytical branch of the CIA. If it does not, will we have duplicate analytical branches? What is the role of CIA under this concept, as far as analysis is concerned?

If the essential relationship between analysts and operators is weakened, does the operational branch become rudderless and the analytical branch too academic? Would the CIA become an organization for conducting clandestine activities only?

I do not think this bill tells us what we expect from CIA in the future. It says what we expect the NID to do, but it really does not reaffirm the role of any existing agencies that I have defined.

Creating an intelligence czar with domestic surveillance authority that is not under the Attorney General, and measures that separate domestic intelligence from law enforcement, go against all the lessons learned by democratic governments the hard way. What are the concerns and dangers of merging domestic and foreign counterterrorism operations under one organization?

Again, I refer to extensive comments Judge Posner made to us before our committee. How will competing views on intelligence be brought to the President's attention? Indeed, how will competing views merge at all in a structure that is so centralized and under the control of the NID?

Much of the bill which stems from the recommendations of the 9/11 Commission report seem to be directed only to the threat of Islamic terrorism, which I agree is a tremendous threat. But does this legislation enable us to better deal with the growing worldwide threats of proliferation of weapons of mass destruction and other very serious problems in terms of intelligence gathering and analysis?

How much will congressional oversight be reduced if this bill becomes law? It appears to point toward one committee but has total budget authority, total reorganization authority dealing with one person who has total authority in the intelligence community. It eliminates diversity. It eliminates even the opportunity for a separate think. It is going to be a two-group thinks, and if they work together, where is the diversity in this community? Where do we get accurate analyses if we can have only the one that is made by the NID?

We created the Department of Homeland Security in an election cycle. I think the experts are telling us now that the transition has not been successful, and the current organization falls short of its goals, as far as homeland security. But isn't that the same environment we face right now, Mr. President? Can we avoid some of the same mistakes we made and have experienced through the Department of Homeland Security and its legislation and development of this legislation?

Would the National Counterterrorism Center be involved in operations? Why would there be a director of operations listed in this organization unless it is involved in operations? If it is, doesn't that complicate planning for operations that currently go on within the Department of Defense, CIA, FBI, and other agencies? Are they all subject to the control of the NID, even in terms of operations?

I do not think that is the intent, but again I do not think it is clear. It is my understanding that the inspector general would have authority to conduct investigations of the relationships among elements of the intelligence community within the national intelligence program and the authority to investigate relationships among elements of the intelligence community within the national intelligence program and other elements of the intelligence community.

If a close reading of this bill grants authorities to the inspector general of this community far greater than other

inspectors general—I was asked that question once and was told it is just the same as the others; that it was just the same. I challenge that now because I do not think other inspectors general have the authority to investigate relationships between the communities, nor do I think the inspector general should have the authority to audit interagency processes in addition to the programs and operations within the national intelligence authority. It presumes we can find an inspector general and his staff that will have the right to complete access of all the intelligence to which the national intelligence director has access. I seriously question that in connection with intelligence.

Does the authority to investigate interagency processes create a tension between the inspector general of the NID and inspectors general of other agencies? I do not see anything that says the Department of Defense inspector general or all of the inspectors general in the intelligence community—and they all have them—is subordinate to all of them, yet this person has authority to investigate interagency processes that are really relationships between agencies, not how the agencies function, not whether something is going on, but whether they are getting along. Who is getting along with whom? What are you going to do with existing IGs? What is their role under this bill?

I do not think it is spelled out at all. I think the bill authorizing the inspector general of the NID to provide policy direction to improve the effectiveness of interagency process, without consulting the Secretaries of Cabinet departments, without consulting agency heads, and without consulting the inspectors general in the agencies themselves, has not been thought through at all.

I do believe the authority to provide policy guidance politicizes the position of inspector general to NID and it would endanger the IG's independence, which I believe is critical to conducting fair and unbiased audits in investigations. I also think there ought to be some statement of the relationship we expect to exist between the NID and the inspector general and the inspectors general of individual agencies that are subordinate to the NID.

Those are just a few of the questions that came to my mind as I read through this bill and report and the comments that have been made. I do hope we have time to explore some of those questions because I think they need to be answered. I do think we need to take care of what the relationship is between this NID and particularly the Department of Defense.

I hope we can work together and find a way to answer the requests made by the administration that were stated yesterday. I thank the Chair.

The PRESIDING OFFICER. The Senator from Alaska yields the floor. Who seeks recognition? The Senator from Arizona.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the pending amendment be set aside.

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

AMENDMENT NO. 3766

(Purpose: To ensure the availability of electromagnetic spectrum for public safety entities)

Mr. MCCAIN. Mr. President, I have an amendment at the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Arizona [Mr. MCCAIN] proposes an amendment numbered 3766.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. MCCAIN. Mr. President, I ask unanimous consent that my amendment be set aside to allow Senator LAUTENBERG to propose an amendment and to speak for no longer than 10 minutes, at which time I will return to my amendment.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator yields the floor. The Senator from New Jersey is recognized.

AMENDMENT NO. 3767

Mr. LAUTENBERG. Mr. President, I thank my colleague from Arizona for his patience. I send my amendment to the desk and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG] proposes an amendment numbered 3767.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To specify that the National Intelligence Director shall serve for one or more terms of up to 5 years each)

On page 10, line 2, insert ''(1)'' after ''DIRECTOR.—''.

On page 10, line 5, insert '', for a term of up to 5 years'' after ''Senate''.

On page 10, after line 5, insert the following:

(2) The National Intelligence Director may be reappointed by the President for additional terms of up to 5 years each, by and with the consent of the Senate.

Mr. LAUTENBERG. Mr. President, first, I commend the chairman of the committee and our esteemed ranking member and say I am pleased to see that we have a chance to wrap up discussion on this reform attempt in the time we are presently allowing.

I offer an amendment to establish a 5-year term for the national intelligence director. Our colleague from Pennsylvania has put forward an amendment to extend the term for the national intelligence director, to put in place a term that is 10 years in length, and I salute the Senator's attempt to try to assure objectivity for the new intelligence chief. The Senator from Pennsylvania and I share the same goal and that is to do all we can to make sure the national intelligence director is as independent and nonpartisan as possible.

My specific proposal differs from the approach used by the Senator from Pennsylvania. Mine would establish a 5-year term, not a 10-year term, for the national intelligence director. Under my amendment, if the President wants to reappoint that person, he could, as long as he sends the nomination to the Senate and we confirm him or her.

Under Senator SPECTER's amendment, the director's term would be limited to a single 10-year term. I think a formula of 5-year terms that could be renewed is more practical. If we are serious about objective intelligence, then we have to provide a national intelligence director with as much independence as we can, that allows him to tell the President things the President may not generally want to hear. The NID should be able to provide information and analysis to the President without necessarily worrying about job security.

During one of our hearings in the Governmental Affairs Committee on intelligence reform earlier this month, I asked interim CIA Director John McLaughlin what he thought of a limited term for the national intelligence director. His response was that it may be yet another way to ensure the objectivity and nonpolitical character of whoever holds that office.

Interim Director McLaughlin is on target. A term for the national intelligence director will bolster objectivity and help keep politics out of our intelligence data.

Some of my colleagues have voiced concern that they want to make sure the director is someone the President trusts, and I wholeheartedly support that. I agree it is critical that the individual and the President have a relationship built on trust. I believe my amendment bolsters that trust. With an independent, objective national intelligence director, the President can trust that the data he gets is objective.

When it comes to intelligence data, a President surely does not want a simple yes-man. The President needs independent, clean, quality analysis.

Unlike the amendment that has been proposed, my amendment does not restrict the director to only one term. If the President wants to renominate the same person to serve in the post again, then he may do so, and the Senate will then decide whether to confirm the person for another term.

I want to be clear that while the amendment provides a degree of independence to the NID, it is not absolute. Under my amendment, the President could certainly dismiss the NID if he

did not have further confidence in his ability to perform. In fact, all it takes for the President to remove the director is the will to do so. So I believe my amendment will help improve the quality of nominees for the position of national intelligence director. With a 5-year term in place, there will be an expectation that the individual serve both Democrats and Republicans. Given what I hope will be a nonpartisan mandate, we will see much more objective and nonpartisan nominees.

I urge my colleagues to support this amendment, and I yield the floor.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from Maine.

Ms. COLLINS. Mr. President, I know the Senator from Arizona is in the Chamber to offer his amendment so I will speak only very briefly. Senator LAUTENBERG's amendment is an improvement over the amendment offered by the Senator from Pennsylvania because it is a shorter term and it does allow the President to remove the NID without specifying a cause, but I still find it problematic.

We are talking about the individual who is going to be the principal adviser to the President. The witnesses were virtually unanimous in advising us that that individual has to have the trust and confidence of the President and that it would be a mistake to set a term.

I argue further against this amendment in the context of the Specter amendment. In light of the fact that the Senator from Arizona is waiting, I will not repeat those arguments at this time.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I believe under the previous unanimous consent agreement that Senator LAUTENBERG's amendment will be set aside and we will return to the consideration of my amendment.

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

Mr. MCCAIN. I also understand that at 2:15 there will be votes as previously ordered.

The PRESIDING OFFICER. Under the previous order, the vote will occur at 2:15 in relation to the Specter amendment No. 3761.

AMENDMENT NO. 3766

Mr. MCCAIN. Mr. President, I would like to use the time between now and the time the vote is ordered to briefly talk about the amendment, but before I do I will say I understand there is controversy associated with this amendment. I do not intend, nor do I believe, that we should hold up the progress of this legislation and I would be more than willing to agree to a time agreement immediately upon completion of the pending votes to give the opponents of this amendment time to consider that.

I would also point out to both proponents and opponents of this amendment this issue is very well known. There may be some Members who are not that familiar with this amendment, but it goes all the way back to 1997 when we had hearings before the Commerce Committee on May 15, 1997, where following the Oklahoma bombing there was, in the view of the witnesses, an urgent requirement to get spectrum to the public safety community as quickly as possible. That was 7 years ago. The same arguments are being used today as were used 7 years ago after the Oklahoma tragedy. So I believe this amendment addresses, as Senator LIEBERMAN and I had committed to do to the families and to the members of the 9/11 Commission, the fact that we would act one way or another on all 41 of their recommendations.

This addresses the following recommendation made by the 9/11 Commission:

Recommendation: Congress should support pending legislation which provides for the expedited and increased assignment of radio spectrum for public safety purposes. Furthermore, high-risk urban areas such as New York City and Washington, D.C., should establish signal corps units to ensure communications connectivity between and among civilian authorities, local first responders, and the National Guard. Federal funding of such units should be given high priority by Congress.

What we are talking about is not only addressing the expedited aspect of their recommendation but also increased assignment. That is why, in this legislation, all of those who are presently using analog spectrum would be required by a date certain, December 31, 2008, without exception, without loophole, to move off of the analog to digital spectrum.

To take care of those who are still using over-the-air broadcasting, $1 billion would be set aside from the auction of this spectrum in order to provide the provision of set top boxes for those Americans who are still using over-the-air television as their primary way of receiving television signals. This is a small amount compared to the immense value of the spectrum itself.

This amendment is supported by the 9/11 Commission. I have a letter from them and statement in support of it.

It says:

We write in support of your amendment to S. 2845 regarding public safety spectrum. Your amendment provides for the expedited and potentially increased assignment of spectrum for public safety purposes. By creating a funding mechanism to aid first responders in the purchase of new equipment, it also recognizes that spectrum alone is insufficient to address the deficiencies in public safety interoperability. In this way, your amendment squarely addresses the needs of public safety cited in the 9/11 Commission report.

We urge your colleagues to support this amendment, because it takes significant steps to addressing the urgent needs of police, fire, emergency medical, and other public safety agencies. By establishing a firm date of December 31, 2007, for the return of spectrum long promised to public safety, your amendment provides much-needed certainty with respect to access to this spectrum. And by establishing a firm date of December 31, 2008, for completion of the digital television transition nationwide, your amendment creates an essential funding mechanism for the purchase of public safety equipment using proceeds from the auction of the broadcast analog spectrum. This latter deadline also ensures that the return of broadcast spectrum for public safety occurs with minimal risk of litigation, minimal impact on consumers, and with maximum flexibility of the Congress to allocate additional spectrum to public safety if it concludes such an allocation is necessary.

Finally, we urge the Senate to reject efforts to weaken your amendment by adding loopholes purporting to offer ''flexibility'' to the assignment of spectrum to public safety entities. The need for this spectrum is too great; the stakes are too large; and the time is too pressing to succumb to efforts to delay these critical measures for first responders everywhere.

I will talk about the successful efforts orchestrated by the National Association of Broadcasters to delay indefinitely the transition from analog to traditional spectrum. Now that my friend from Montana is in the Chamber, I will quote from a speech he made in 1997, 7 years ago, which basically lays out the same concerns he and the National Association of Broadcasters have today.

It is time we acted. It's time we gave these people the spectrum they deserve. We can do that, along with providing those who are now and will only receive over-the-air television a set top box, which will allow them to receive digital television signals.

Mr. President, I think we are close to 2:15.

The PRESIDING OFFICER. The Senator has half a minute remaining.

Mr. MCCAIN. I understand, as I said before, that there is controversy associated with this. I will be more than happy to agree to a time agreement, a very reasonable time agreement to debate this issue and vote on this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I ask unanimous consent that there be 2 minutes equally divided between the two votes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. There will be 2 minutes, equally divided.

Mr. DOMENICI. Between the votes. Not on the first amendment.

Ms. COLLINS. Prior to the second vote.

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

AMENDMENT NO. 3761

Ms. COLLINS. Mr. President, under the previous order we are now going to proceed to a vote on Senator SPECTER's amendment, No. 3761. That is the amendment that would set the 10-year term for the national intelligence director. I move to table the 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 legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. AKAKA), the Senator from North Carolina (Mr. EDWARDS), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

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

The result was announced—yeas 93, nays 4, as follows:

[Rollcall Vote No. 191 Leg.]

YEAS—93

| | | |
|---|---|---|
| Alexander | Dodd | Lincoln |
| Allard | Dole | Lott |
| Allen | Domenici | Lugar |
| Baucus | Dorgan | McCain |
| Bayh | Durbin | McConnell |
| Bennett | Ensign | Mikulski |
| Biden | Enzi | Miller |
| Bingaman | Feingold | Murkowski |
| Bond | Fitzgerald | Murray |
| Boxer | Frist | Nelson (FL) |
| Breaux | Graham (FL) | Nelson (NE) |
| Brownback | Graham (SC) | Nickles |
| Bunning | Grassley | Pryor |
| Burns | Gregg | Reed |
| Campbell | Hagel | Reid |
| Cantwell | Harkin | Roberts |
| Carper | Hatch | Rockefeller |
| Chafee | Hollings | Santorum |
| Chambliss | Hutchison | Sarbanes |
| Clinton | Inhofe | Schumer |
| Cochran | Inouye | Sessions |
| Coleman | Jeffords | Shelby |
| Collins | Johnson | Smith |
| Conrad | Kennedy | Snowe |
| Cornyn | Kohl | Stevens |
| Corzine | Kyl | Sununu |
| Craig | Landrieu | Talent |
| Crapo | Lautenberg | Thomas |
| Daschle | Leahy | Voinovich |
| Dayton | Levin | Warner |
| DeWine | Lieberman | Wyden |

NAYS—4

| | |
|---|---|
| Byrd | Specter |
| Feinstein | Stabenow |

NOT VOTING—3

| | | |
|---|---|---|
| Akaka | Edwards | Kerry |

The motion was agreed to.

Mr. BOND. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3706

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to a vote in relation to Specter amendment No. 3706. There will be 2 minutes of debate equally divided prior to the vote.

Who seeks time?

The Senator from Maine.

Ms. COLLINS. Mr. President, I would like to split the 1 minute on the opponents' side, 30 seconds for myself and 30 seconds for the Senator from Connecticut.

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

Ms. COLLINS. I ask the Senator from Pennsylvania, do you want to go first?

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, this amendment gives the national intelligence director authority to supervise, direct the kind of managerial authority which is indispensable if the national intelligence director is to be effective.

Of those of us who have dealt with the Central Intelligence Agency, Senator ROBERTS, the current chair of the committee, is forcefully in favor of this amendment, as is Senator SHELBY, former chairman of the committee, as am I. Very forceful arguments were made today by members of the committee—Senator HATCH, Senator BOND, Senator DEWINE.

But if we are really to bring the intelligence community under management, if we are really to have the kind of coordination, to have all of the information in one locale, where 9/11 could have been prevented, and to have accountability, it is indispensable to do more than give budget authority, which is all the committee bill does, but to give the national intelligence director the authority to supervise, direct real management authority to get the job done.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Maine.

Ms. COLLINS. Mr. President, in deciding to keep the NSA and the NGA within the Department of Defense, we were mindful of the fact that these agencies are combat support agencies. We do not want to sever the link between these agencies and the Secretary of Defense. We have already given the NID strong power in terms of budget, in terms of appointing the heads of these agencies, with concurrence from the Secretary of Defense. I urge opposition to the amendment.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I also urge opposition to the Specter amendment. The fact is, our committee has found a balance. We have created someone in charge of the intelligence community who is not there now, giving that person the authority Senator COLLINS has referred to, but leaving line control over the agencies of the intelligence community, including the Department of Defense, within the Department of Defense and those existing agencies.

The fact is, this amendment goes too far and goes too far politically because if this amendment should pass, this bill is not going to go anywhere in the House, and we will end up leaving ourselves vulnerable.

The PRESIDING OFFICER. The time has expired.

The Senator from Maine.

Ms. COLLINS. I move to table the amendment.

Mr. SPECTER. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be 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. REID. I announce that the Senator from Hawaii (Mr. AKAKA), the Senator from North Carolina (Mr. EDWARDS), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

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

The result was announced—yeas 78, nays 19, as follows:

[Rollcall Vote No. 192 Leg.]

YEAS—78

| | | |
|---|---|---|
| Allard | Dorgan | Lieberman |
| Allen | Durbin | Lincoln |
| Baucus | Ensign | Lugar |
| Biden | Enzi | McCain |
| Bingaman | Feingold | McConnell |
| Boxer | Feinstein | Mikulski |
| Breaux | Fitzgerald | Miller |
| Bunning | Frist | Murray |
| Burns | Graham (FL) | Nelson (FL) |
| Byrd | Graham (SC) | Nelson (NE) |
| Campbell | Grassley | Nickles |
| Cantwell | Gregg | Pryor |
| Carper | Hagel | Reed |
| Chafee | Hollings | Reid |
| Chambliss | Hutchison | Rockefeller |
| Clinton | Inhofe | Sarbanes |
| Cochran | Inouye | Schumer |
| Coleman | Jeffords | Sessions |
| Collins | Johnson | Smith |
| Cornyn | Kennedy | Stabenow |
| Corzine | Kohl | Stevens |
| Daschle | Kyl | Sununu |
| Dayton | Landrieu | Talent |
| Dodd | Lautenberg | Thomas |
| Dole | Leahy | Voinovich |
| Domenici | Levin | Warner |

NAYS—19

| | | |
|---|---|---|
| Alexander | Crapo | Santorum |
| Bayh | DeWine | Shelby |
| Bennett | Harkin | Snowe |
| Bond | Hatch | Specter |
| Brownback | Lott | Wyden |
| Conrad | Murkowski | |
| Craig | Roberts | |

NOT VOTING—3

| | | |
|---|---|---|
| Akaka | Edwards | Kerry |

The motion was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senator from Iowa, Mr. HARKIN, will be recognized for 15 minutes.

Mr. HARKIN. Mr. President, how much time does the Senator from Iowa have?

The PRESIDING OFFICER. The Senator will be recognized for 15 minutes under the previous order.

Mr. LIEBERMAN. Mr. President, I move to reconsider the vote.

Ms. COLLINS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

IRAQ AND AL-QAIDA

Mr. HARKIN. Mr. President, there is no longer any doubt about President Bush's reelection strategy. It is the same strategy that was used in the election 2 years ago: They invoke the images of the 9/11 attacks and warn that new terrorist attacks are imminent. They stoke Americans' fears and anxieties. And, of course, they accuse their opponents of being weak on terrorism, not willing to defend America.

The events of 9/11 were traumatic, and we all understand Americans' fear

of a new terrorist attack. But it is despicable to politicize this fear. It is despicable to exploit people's anxieties for political advantage. But this administration has done this again and again.

This is exactly what Vice President DICK CHENEY was up to when he warned that if JOHN KERRY is elected President, then ''the danger is that we'll get hit again, that we'll be hit in a way that will be devastating.''

You have to appreciate the pure Orwellian beauty of that statement. It was on President Bush's watch that we suffered the September 11 attack, a real attack, not a hypothetical one, and that attack happened despite multiple warnings to Mr. Bush from the CIA that al-Qaida was planning to attack America. Yet now his attack dog Vice President has the gall to warn that if JOHN KERRY is elected President, the terrorists will hit us with a ''devastating attack.''

As I said, this is the administration's reelection strategy: Fear and smear; politicize the terrorist threat; exploit people's fears and anxieties for political advantage.

Late last week, President Bush and his allies escalated this strategy to a new level. They are now saying, in effect, that Senator KERRY is giving aid and comfort to the terrorists, and that as Republican Representative TOM COLE crudely put it:

If George Bush loses the election, Osama bin Laden wins the election.

Last Tuesday, the senior Senator from Utah, and a good friend of mine, Senator HATCH, said that terrorists ''are going to throw everything they can between now and the election to try and elect KERRY.''

Last Monday, Deputy Secretary of State Richard Armitage said terrorists in Iraq ''are trying to influence the election against President Bush.''

Last Thursday, President Bush said Senator KERRY's statements on Iraq ''can embolden the enemy.''

And Vice President CHENEY called Senator KERRY ''destructive'' to the war on terrorism.

This morning our colleague from Arizona, Senator KYL, criticized an earlier floor statement by Senator KENNEDY. Senator KYL said that Senator KENNEDY's criticisms of the President's policy in Iraq were ''giving confidence to the enemy.'' That was said just this morning on the floor of the Senate.

This is disturbing. Since when is an entirely legitimate and justified criticism of the President's policy in Iraq ''giving confidence to the enemy.'' This is an outrageous accusation. It has no place on the Senate floor for legitimate debate.

I remind the Senator from Arizona of the wise words of President Dwight Eisenhower who said that criticism and dissent are the bedrock of democracy. This is what President Eisenhower said in 1954 at Columbia University:

Here in America, we are descended in blood and in spirit from revolutionists and rebels—men and women who dared to dissent from accepted doctrine. As their heirs, we may never confuse honest dissent with disloyal subversion.

That was President Dwight Eisenhower.

So we will not be silenced by accusations of disloyalty or accusations that we are helping the enemy or giving confidence to the enemy. Is all we are supposed to do hush up and allow Mr. Bush's reckless policies to lead us deeper and deeper into the quagmire?

These gentlemen claim to have such excellent access to the terrorists' thoughts. It would be nice if they would turn that knowledge into an effective policy against the terrorists. Instead, at key junctures, this administration has made disastrously wrong choices and repeatedly these decisions have played into the terrorists' hands. Look at the record.

It is a fact that the September 11 attacks happened despite repeated warnings to the President from the CIA that al-Qaida was planning to attack America. Those warnings included an August 8, 2001, President's daily briefing which he received when he was on vacation in Crawford, TX, titled ''Bin Laden Determined to Strike in U.S.'' That is not a subhead or a sentence in the memo; that is the title of the memo: ''Bin Laden Determined to Strike in U.S.''

Let's look at the rest of the record.

President Bush botched the single best opportunity to capture bin Laden when we had him cornered in Torah Borah in Afghanistan, and yet the President removed intelligence personnel and predator aircraft from Afghanistan to put them in Iraq.

It was President Bush who 3 years ago pledged to smoke bin Laden out of his cave but has utterly failed to do so. Instead, by successfully defying the President, because we have been so bogged down in the quagmire of Iraq, bin Laden has become a folk hero across much of the Muslim world. He has attracted not only thousands of new recruits but dozens of imitators, new bin Ladens, forming their own terrorist organizations to attack America and Americans.

It was President Bush who diverted, as I said, our military and intelligence resources from the hunt of bin Laden in order to attack Iraq.

It was President Bush whose taunt of ''bring it on'' did indeed bring it on—a nationwide insurgency in Iraq, an urban guerrilla that has trapped our Armed Forces, as I said, in a quagmire.

It was President Bush whose unilateral approach on Iraq served to alienate many of our oldest allies and to turn world opinion against the United States.

It was President Bush whose invasion and occupation of the second largest Arab country has outraged much of the Muslim world and has been a recruiting bonanza for terrorism. Indeed, George W. Bush's policies—reckless and wrong—have been the best recruiting tool imaginable for al-Qaida.

This is an astonishing record of mistakes, misjudgments, miscalculations, and mismanagement. It is an astonishing record of George W. Bush again and again playing into Osama bin Laden's hands. It is sort of like watching the cartoon of Wile E. Coyote chasing the Road Runner, only it is not funny. It is a colossal tragedy that has put our Nation at even greater risk.

Ironically, President Bush's father, the first President Bush, warned against the folly of invading and occupying Iraq. On February 28, 1999, speaking to a group of Desert Storm veterans at Fort Myer, VA, he said:

Had we gone into Baghdad—we could have done that, you guys could have done it, you could have been there in 48 hours—and then what? Whose life would be on my hands as the Commander in Chief because I unilaterally went beyond international law, went beyond the stated mission and said we're going to show our macho? We're going into Baghdad. We're going to be an occupying power—America in an Arab land with no allies at our side. It would have been disastrous.

That is not this Senator saying that; that is former President Bush in February 1999.

Now, of course, we heard the same pathetic warnings from Brent Scowcroft, James Baker, and other foreign policy specialists, but this President and his partner DICK CHENEY and their posse of neoconservative intellectuals thought they knew better. They reveled in words like ''slam dunk'' and ''cakewalk.'' And so now the disaster Bush 41 warned against has become a reality under Bush 43.

President Bush repeatedly says that his No. 1 job is to protect the American people. But the view of professionals on the front line is that he has failed to do so.

The Iraq invasion has set back, rather than advanced, the war on terrorism and al-Qaida. Osama bin Laden remains at large. Our Armed Forces are bogged down in Iraq with casualties rising above 8,000 and are not available to respond to real threats to the United States. In the wake of the Abu Ghraib prison scandals, our moral authority and credibility on the world stage are at rock bottom.

I was watching former President Jimmy Carter, winner of the Nobel Peace Prize, at the Carter Center just a few days ago saying that he has visited 120 countries around the world, and he believes that at no time in the history of our country has our esteem, credibility, and moral authority been at such a low point.

Despite President Bush's loud threats toward the so-called ''axis of evil'' on his watch, North Korea has acquired nuclear weapons. Iran appears to be proceeding with impunity to develop its own nuclear arsenal. Again, this is an extraordinary record of mistakes, misjudgments, miscalculations, and missed opportunities.

As a consequence of the choices made by this President over the last 4 years, I believe today America is weaker, less

secure, and more vulnerable. It is indeed time, past time, to change these policies.

I ask unanimous consent that at the termination of my remarks, two articles, ''Growing Pessimism on Iraq,'' Wednesday, September 29, Washington Post, and an article appearing on September 28 in the New York Times, ''Iraq Study Sees Rebels' Attacks as Widespread,'' be printed in their entirety in the RECORD.

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

(See exhibits 1 and 2.)

Mr. HARKIN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Iowa has 3 minutes 40 seconds remaining.

Mr. HARKIN. I want to correct one other thing that was said this morning by the Senator from Arizona. He talked about the connections between al-Qaida and Iraq. He quoted Mr. Tom Kean speaking about that relationship, and I will quote, in its entirety, from page 66 of the report:

The reports describe friendly contacts and indicate some common themes in both sides' hatred of the United States. But to date we have seen no evidence that these or the earlier contacts ever developed into a collaborative operational relationship. Nor have we seen evidence indicating that Iraq cooperated with al-Qaida in developing or carrying out any attacks against the United States.

Sure, it is true that al-Qaida had relationships with Iraq. They had relationships with Saudi Arabia. They had relationships in Egypt. They had relationships in a lot of countries. But as the report clearly shows on page 66, there was no operational relationship between al-Qaida and Iraq as determined by the Commission.

I yield back whatever time I have remaining.

EXHIBIT 1

[From the Washington Post, Sept. 29, 2004]

GROWING PESSIMISM ON IRAQ

(By Dana Priest and Thomas E. Ricks)

A growing number of career professionals within national security agencies believe that the situation in Iraq is much worse, and the path to success much more tenuous, than is being expressed in public by top Bush administration officials, according to former and current government officials and assessments over the past year by intelligence officials at the CIA and the departments of State and Defense.

While President Bush, Defense Secretary Donald H. Rumsfeld and others have delivered optimistic public appraisals, officials who fight the Iraqi insurgency and study it at the CIA and the State Department and within the Army officer corps believe the rebellion is deeper and more widespread than is being publicly acknowledged, officials say.

People at the CIA ''are mad at the policy in Iraq because it's a disaster, and they're digging the hole deeper and deeper and deeper,'' said one former intelligence officer who maintains contact with CIA officials. ''There's no obvious way to fix it. The best we can hope for is a semi-failed state hobbling along with terrorists and a succession of weak governments.''

''Things are definitely not improving,'' said one U.S. government official who reads the intelligence analyses on Iraq.

''It is getting worse,'' agreed an Army staff officer who served in Iraq and stays in touch with comrades in Baghdad through e-mail. ''It just seems there is a lot of pessimism flowing out of theater now. There are things going on that are unbelievable to me. They have infiltrators conducting attacks in the Green Zone. That was not the case a year ago.''

This weekend, in a rare departure from the positive talking points used by administration spokesmen, Secretary of State Colin L. Powell acknowledged that the insurgency is strengthening and that anti-Americanism in the Middle East is increasing. ''Yes, it's getting worse,'' he said of the insurgency on ABC's ''This Week.'' At the same time, the U.S. commander for the Middle East, Gen. John P. Abizaid, told NBC's ''Meet the Press'' that ''we will fight our way through the elections.'' Abizaid said he believes Iraq is still winnable once a new political order and the Iraqi security force is in place.

Powell's admission and Abizaid's sobering warning came days after the public disclosure of a National Intelligence Council (NIC) assessment, completed in July, that gave a dramatically different outlook than the administration's and represented a consensus at the CIA and the State and Defense departments.

In the best-case scenario, the NIC said, Iraq could be expected to achieve a ''tenuous stability'' over the next 18 months. In the worst case, it could dissolve into civil war.

The July assessment was similar to one produced before the war and another in late 2003 that also were more pessimistic in tone than the administration's portrayal of the resistance to the U.S. occupation, according to senior administration officials. ''All say they expect things to get worse,'' one former official said.

One official involved in evaluating the July document said the NIC, which advises the director of central intelligence, decided not to include a more rosy scenario ''because it looked so unreal.''

White House spokesman Scott McClellan, and other White House spokesmen, called the intelligence assessment the work of ''pessimists and naysayers'' after its outlines were disclosed by the New York Times.

President Bush called the assessment a guess, which drew the consternation of many intelligence officials. ''The CIA laid out several scenarios,'' Bush said on Sept. 21. ''It said that life could by lousy. Life could be okay. Life could be better. And they were just guessing as to what the conditions might be like.''

Two days later, Bush reworded his response. ''I used an unfortunate word, 'guess.' I should have used 'estimate.' ''

''And the CIA came and said, 'This is a possibility, this is a possibility, and this is a possibility,'" Bush continued. ''But what's important for the American people to hear is reality. And the reality's right here in the form of the prime minister. And he is explaining what is happening on the ground. That's the best report.''

Rumsfeld, who once dismissed the insurgents as ''dead-enders,'' still offers a positive portrayal of prospects and progress in Iraq but has begun to temper his optimism in public. ''The path towards liberty is not smooth there; it never has been,'' he said before the Senate Armed Services Committee last week. ''And my personal view is that a fair assessment requires some patience and some perspective.''

This week, conservative columnist Robert D. Novak criticized the CIA and Paul Pillar, a national intelligence officer on the NIC who supervised the preparation of the assessment. Novak said comments Pillar made about Iraq during a private dinner in California showed that he and others at the CIA are at war with the president. Recent and current intelligence officials interviewed over the last two days dispute that view.

''Pillar is the ultimate professional,'' said Daniel Byman, an intelligence expert and Georgetown University professor who has worked with Pillar. ''If anything, he's too soft-spoken.''

''I'm not surprised if people in the administration were put on the defensive,'' said one CIA official, who like many others interviewed would speak only anonymously, either because they don't have official authorization to speak or because they worry about ramifications of criticizing top administration officials. ''We weren't trying to make them look bad, we're just trying to give them information. Of course, we're telling them something they don't want to hear.''

As for a war between the CIA and White House, said one intelligence expert with contacts at the CIA, the State Department and the Pentagon, ''There's a real war going on here that's not just'' the CIA against the administration on Iraq ''but the State Department and the military'' as well.

National security officials acknowledge that the upcoming presidential election also seems to have distorted the public debate on Iraq.

''Everyone says Iraq certainly has turned out to be more intense than expected, especially the intensity of nationalism on the part of the Iraqi people,'' said Steven Metz, chairman of the regional strategy and planning department at the U.S. Army War College. But, he added, ''I don't think the political discourse that we're in the middle of accurately reflects anything. There's a supercharged debate on both sides, a movement to out-state each side.''

Reports from Iraq have made one Army staff officer question whether adequate progress is being made there.

''They keep telling us that Iraqi security forces are the exit strategy, but what I hear from the ground is that they aren't working,'' he said. ''There's a feeling that Iraqi security forces are in cahoots with the insurgents and the general public to get the occupiers out.''

He added: ''I hope I'm wrong.''

EXHIBIT 2

[From the New York Times, Sept. 29, 2004]

IRAQ STUDY SEES REBELS' ATTACKS AS WIDESPREAD

(By James Glanz and Thom Shanker)

BAGHDAD, IRAQ, Sept. 28.—Over the past 30 days, more than 2,300 attacks by insurgents have been directed against civilians and military targets in Iraq, in a pattern that sprawls over nearly every major population center outside the Kurdish north, according to comprehensive data compiled by a private security company with access to military intelligence reports and its own network of Iraqi informants.

The sweeping geographical reach of the attacks, from Nineveh and Salahuddin Provinces in the northwest to Babylon and Diyala in the center and Basra in the south, suggests a more widespread resistance than the isolated pockets described by Iraqi government officials.

The type of attacks ran the gamut: car bombs, time bombs, rocket-propelled grenades, hand grenades, small-arms fire, mortar attacks and land mines.

''If you look at incident data and you put incident data on the map, it's not a few provinces,'' said Adam Collins, a security expert and the chief intelligence official in Iraq for Special Operations Consulting-Security Management Group Inc., a private security company based in Las Vegas that compiles

and analyzes the data as a regular part of its operations in Iraq.

The number of attacks has risen and fallen over the months. Mr. Collins said the highest numbers were in April, when there was major fighting in Falluja, with attacks averaging 120 a day. The average is now about 80 a day, he said.

But it is a measure of both the fog of war and the fact that different analysts can look at the same numbers and come to opposite conclusions, that others see a nation in which most people are perfectly safe and elections can be held with clear legitimacy.

''I have every reason to believe that the Iraqi people are going to be able to hold elections,'' said Lt. Col. William Nichols of the Air Force, a spokesman for the American-led coalition forces here.

Indeed, no raw compilation of statistics on numbers of attacks can measure what is perhaps the most important political equation facing Prime Minister Ayad Allawi and the American military: how much of Iraq is under the firm control of the interim government. That will determine the likelihood—and quality—of elections in January.

For example, the number of attacks is not an accurate measure of control in Falluja; attacks have recently dropped there, but the town is controlled by insurgents and is a ''no go'' zone for the American military and Iraqi security forces. It is a place where elections could not be held without dramatic political or military intervention.

The statistics show that there have been just under 1,000 attacks in Baghdad during the past month; in fact, an American military spokesman said this week that since April, insurgents have fired nearly 3,000 mortar rounds in Baghdad alone. But those figures do not necessarily preclude having elections in the Iraqi capital.

Pentagon officials and military officers like to point to a separate list of statistics to counter the tally of attacks, including the number of schools and clinics opened. They cite statistics indicating that a growing number of Iraqi security forces are trained and fully equipped, and they note that applicants continue to line up at recruiting stations despite bombings of them.

But most of all, military officers argue that despite the rise in bloody attacks during the past 30 days, the insurgents have yet to win a single battle.

''We have had zero tactical losses; we have lost no battles,'' said one senior American military officer. ''The insurgency has had zero tactical victories. But that is not what this is about.

''We are at a very critical time,'' the officer added. ''The only way we can lose this battle is if the American people decide we don't want to fight anymore.''

American government officials explain that optimistic assessments about Iraq from President Bush and Prime Minister Allawi can be interpreted as a declaration of a strategic goal: that, despite the attacks, elections will be held. The comments are meant as a balance to the insurgents' strategy of roadside bombings and mortar attacks and gruesome beheadings, all meant to declare to Iraq and the world that the country is in chaos, and that mayhem will prevent the country from ever reaching democratic elections.

In a joint appearance last week in the White House Rose Garden, Mr. Bush and Dr. Allawi painted an optimistic portrait of the security situation in Iraq.

Dr. Allawi said that of Iraq's 18 provinces, ''14 to 15 are completely safe.'' He added that the other provinces suffer ''pockets of terrorists'' who inflict damage in them and plot attacks carried out elsewhere in the country. In other appearances, Dr. Allawi asserted that elections could be held in 15 of the 18 provinces.

Both Mr. Bush and Dr. Allawi insisted that Iraq would hold free elections as scheduled in January.

''The question is not whether there are attacks,'' said one Pentagon official. ''Of course there are. But what are the proper measurements for progress?''

Statistics collected by private security firms, which include attacks on Iraqi civilians and private security contractors, tend to be more comprehensive than those collected by the military, which focuses on attacks against foreign troops. The period covered by Special Operations Consulting's data represents a typical month, with its average of 79 attacks a day falling between the valleys during quiet periods and the peaks during the outbreak of insurgency in April or the battle with Moktada al-Sadr's militia in August for control of Najaf.

During the past 30 days those attacks totaled 283 in Nineveh, 325 in Salahuddin in the northwest and 332 in the desert badlands of Anbar Province in the west. In the center of Iraq, attacks numbered 123 in Diyala Province, 76 in Babylon and 13 in Wasit. There was not a single province without an attack in the 30–day period.

Still, some Iraqis share their prime minister's optimism when it comes to the likelihood that elections, and a closely related census, can be carried out successfully amid so much violence. ''We are ready to start,'' said Hamid Abd Muhsen, an Iraqi education official who is supervising parts of the census in Baghad. ''I swear to God.''

The PRESIDING OFFICER. The majority leader is recognized.

Mr. FRIST. Mr. President, the Democratic leader, the managers of the bill, and the leadership on both sides have been in conversation over the last 30 minutes or so looking at the schedule for the bill that is on the Senate floor. It is a critically important bill. We have made good progress, and if we look at the way the day has been spent, it has been spent on very significant legislation. But if we project that out and look at the reality, we have 300 amendments that have been given to the managers and to leadership on a bill that we absolutely will finish before we depart.

We will finish reform of the executive branch, which is on the floor, and reform of the Senate, before we leave on October 8. There is also a lot of other business—the appropriations, the continuing resolutions, and the extensions.

With that recognition, we have 300 amendments. In a little bit, the Democratic leader and I will have a unanimous consent for a filing deadline tomorrow during the afternoon so that everybody will, as we said earlier this morning and late last night, get their amendments in, and language so that we can fully assess how many amendments we are going to really have to deal with. Our deadline that we set this morning at 10 did generate 300 potential amendments.

It is clear we are going to have to pick up the pace on issues that have been discussed thoroughly in committee. We are going to have to, in a very efficient way, have our managers deal with them on the Senate floor and go through the amendments in an orderly way. At some point it may be necessary for us to file cloture. It is not something we want to do, but if we file cloture we would still be able to have germane amendments introduced. That is not the intent, but unless we can work through the amendments, have the amendments submitted, have people come to the floor today, tonight, tomorrow, Friday, and Monday, it is something that at least we will have to consider. I say that, again, to give some sense of urgency that we need to have these amendments come forward. We need to see them, and we need to have the managers have the opportunity to debate them and vote on them expeditiously.

The PRESIDING OFFICER. The minority leader is recognized.

Mr. DASCHLE. Mr. President, I add my voice of support for what the majority leader said. We want Senators who have amendments to come to the floor to offer them. As we get this filing deadline agreement, we are also going to ensure that Senators are protected. We know there is a backlog with the legislative counsel and that it will take a little time to draft them. So we will accommodate Senators with that practical consideration in mind, but we hope that Senators understand Friday is going to be a full day of work, and we need a lot of amendments offered on Friday.

We are going to have to have all of these amendments debated, and we will look at the circumstances at some point. I will support the cloture motion if we are not making adequate progress. So Senators need to offer their amendments, agree to time limits, and move this legislative process along.

We will get that filing agreement this afternoon, and Senators then will have the opportunity to be clearer as to their intention with regard to these amendments. It is not our desire to hold them precisely to the language of the amendment, but we need to know how many real amendments there are.

I support the majority leader's commitment to both the bill pending as well as to the organization of the legislative branch prior to the time we leave. Both of these matters have to be addressed, and I think as we continue to work as successfully as we have, we can accomplish this work before we leave. We just need the cooperation of all Members in that regard.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. FRIST. Mr. President, we are making good progress. We will continue to come to the floor to give a perspective given the fact that we have so little time before we depart. Again, we are going to finish both the internal oversight as well as the external oversight before we leave because we need to keep working in an efficient, rapid, but obviously deliberative way. We both thank the managers for their tremendous job and leadership thus far.

The PRESIDING OFFICER. The Senator from Alabama.

AMERICAN CANNOT GO WOBBLY ON IRAQ

Mr. SESSIONS. Mr. President, I know we are in a political season, and I suppose that will impact our business in the Senate as we address the many issues that are before us. But the Senator from Iowa just made some comments about where we are in the war on terror that I think need to be discussed.

First, I remember when former President Bush called Maggie Thatcher to ask for her support for his action during the first gulf war. Saddam Hussein had invaded Kuwait and he asked for her support.

Maggie Thatcher said: Of course, Mr. President. Just do not go wobbly on me.

That phrase was discussed quite a lot at the White House. Everyone understood that once a commitment is made to do something like confront a tyrant like Saddam Hussein after he invaded the sovereign nation of Kuwait, that you could not go wobbly once action was undertaken.

Secondly, we spent weeks and months in this body discussing the problem of Saddam Hussein. I know my distinguished friend from Iowa was a military pilot and can appreciate the fact that our aircraft were being fired on over a thousand times as they enforced the no-fly zones over Iraq related to the U.N. resolutions that arose after Hussein's attack on Kuwait.

We were spending billions of dollars maintaining our aircraft in the region because we were concerned about Saddam Hussein. He was in violation of 16 U.N. resolutions, and we urged him to come clean several times. We gave him one last chance to join the civilized nations of the world. He was given those warnings in clear and unequivocal ways. This Senate discussed it and voted on it. We voted with a three-fourths majority to support the President and to authorize the President to make one final demand on Iraq and Saddam Hussein to renounce their weapons of mass destruction, to renounce their activities in violation of the U.N., and to demonstrate that he had complied with the demands of the civilized world.

Saddam Hussein rejected that opportunity, and we knew at the time if he did not comply, that hostilities would begin.

We are all grownups in this body and we knew what it meant when we voted. At the time, the distinguished junior Senator from Massachusetts and now the Democratic nominee for President voted for the resolution that authorized the President to commence hostilities. Now some want to go wobbly. They say that things are not going perfectly. Since we have an election cycle on, they believe they can just say anything they want even if it undermines our soldiers in the field or if it encourages the enemy. And I would add that these detractors will say that if anybody accuses them of harming the effort to defeat terrorism or complains about the impact to the morale of our troops in the field, why, they will just say it is free speech. They believe they can say whatever they want to.

Of course there is free speech. Any Senator in this body can come forth and say whatever they want to. I do not intend to impugn the motives of any who express their views about the hostilities in Iraq at this point. But I would just say this: Some things can hurt. When we have a Senator in an official hearing or on the floor of the Senate make statements before the world such as that the misbehavior that occurred and the illegalities that occurred in Abu Ghirab prison indicated that Saddam Hussein's prison had been ''opened under new management,'' I suggest to you that Senator is subject to being criticized for it. That is because he was wrong, No. 1, and No. 2, it encouraged and gave fodder for those who want to complain that the United States is on a mission to harm the Iraqi people and not to establish a sovereign, free, prosperous government, which is what we want to do. That is our goal.

So it is legitimate that we express concerns about some of the statements made by colleagues. That is an honest debate. If people, in effect, think we have Saddam Hussein's prisons under new management, they have a right to say so. But I submit we have had hearing after hearing, and the evidence clearly shows it is not true. It is not correct. We ought not be saying such falsehoods on the floor of the Senate.

They say things are so bad in Iraq and we are worse off at home. However, Iraqi Prime Minister Allawi recently said:

''It's very important for the people of the world really to know what we are winning. We are making progress in Iraq. We are defeating terrorists. Najaf, Samarra, Mosul, Basra are all live examples that a lot of progress has been made. And this is all because of the determination of the Iraqi people.''

They say that the elections can't be held in Iraq. We have heard that argument. This is what Prime Minister Allawi said:

''We are definitely going to stick to the timetable of elections in January of next year. We are doing our best to ensure that we meet the time of the elections. We are adamant that democracy is going to prevail, it is going to win Iraq. We are going to stick to this time, and I call upon the United Nations to help us in providing whatever it takes to make the elections a success in Iraq. January next, is going to be a major blow to terrorists and insurgents. Once we go through the democratic process, once we achieve progress towards democracy, the terrorists will be defeated.''

So said Prime Minister Allawi.

Here is what the Iraqi people say. An International Republican Institute poll in Iraq showed this: 87 percent of Iraqis polled nationwide indicated they plan to vote in the January elections. Eighty-seven percent planned to vote!

Most observers understand that it is not good if people won't participate in an election. You would rather have them vote. Whichever side of an issue you prefer, you still want to vote. But a massive boycott of an election would be something that would be serious and cause us concern if people weren't interested in an election. But 87 percent said they intend to vote. Seventy-seven percent said that ''regular, fair elections'' were the most important political right for the Iraqi people. Seventy-seven percent said that.

Here is what the critics say: The U.S. went to war without a ''broad and deep coalition,'' and this has ''divided our oldest alliance, NATO.''

But here are the facts. There are more Iraqi and non-U.S. soldiers on the ground stabilizing Iraq than there are U.S. forces. Besides the United States, there are 32 countries contributing approximately 25,000 soldiers to the coalition operating in Iraq; 15 of the 26 NATO countries have troops on the ground in Iraq. The Iraqi Government has approximately 154,500 soldiers and police forces on hand to provide security and stability throughout the country.

On 22 September, our NATO allies agreed to further implement the decision by the heads of state and government to increase the assistance to the Government of Iraq with the training of its security forces. General Patreus, commander of the 101st Airborne, is over there now. Actually, he was formerly the commander of the 101st. He led them in northern Iraq and Mosul, and he has now gone back to train Iraqi forces. He is a remarkable general with incredible capacity for work, and energy. I am confident that he will be successful.

I know there is much to be accomplished. We have a lot of high goals in Iraq. It is not an easy matter. It is going to be a tough battle, but we are making progress. We will prevail, and we must not go wobbly.

I yield the floor.

AMENDMENT NO. 3766

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, what is the pending business?

The PRESIDING OFFICER. The amendment of the Senator, No. 3766, is the pending business.

Mr. MCCAIN. Mr. President, I would like to discuss my amendment. We are in some discussions right now with other staffs, and hopefully we may have an agreement that would then allow us to agree by voice vote to this amendment. But I want to talk about it because it is a very important issue. It is important to our first responders. It is important to our broadcasters. It is important to public safety.

There is a long history, going back at least to Oklahoma City, that the failure to have the ability to communicate costs the lives of innocent Americans. It really is not any more complicated than that.

I ask unanimous consent that a letter to me from the Association of Public-Safety Communications Officials-

International, the Congressional Fire Services Institute, the International Association of Chiefs of Police, the International Association of Fire Chiefs, Major Cities Chiefs Association, Major County Sheriffs' Association, and the National Sheriffs' Association be printed in the RECORD.

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

SEPTEMBER 28, 2004.

Hon. JOHN MCCAIN,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR MCCAIN, we are writing to express our strong support for your proposed amendment to S. 2845, the ''National Intelligence Reform Act of 2004,'' to establish a firm date to provide additional radio spectrum for our nation's first responders.

As you know, police, fire, emergency medical and other public safety agencies face severe shortages of radio spectrum in much of the nation, and are often forced to operate on crowded radio frequencies that are incompatible with their neighboring agencies. Additional public safety spectrum would enhance our homeland security by promoting more interoperable radio communications, alleviating dangerous congestion on existing radio systems, and allowing for the implementation of state-of-the-art communications technologies to protect the safety of life and property.

In 1997, Congress required that certain television broadcast spectrum be reallocated for public safety use, but limited access to that spectrum until the uncertain end of the digital television (DTV) transition. Your amendment would establish a firm date of January 1, 2008, to make that already allocated public safety spectrum available nationwide, and end the DTV transition overall as of January 1, 2009. The amendment would also provide a source of funding for future interoperable radio communications, and create an opportunity for further public safety spectrum allocations.

We urge the Senate to reject amendments to your proposal that would add uncertainty for public safety spectrum availability. Without a firm date, state and local governments will not be able to proceed to plan, fund, or construct new interoperable radio communications systems.

Thank you for your continued support of our nation's first responders.

Sincerely,

GREGORY BALLENTINE,
*President, Association of Public-Safety Communications Officials-International.*
STEVE EDWARDS,
*Chairman, Congressional Fire Services Institute.*
CHIEF JOE POLISAR,
*President, International Association of Chiefs of Police.*
CHIEF ROBERT A. DIPOLI,
*President, International Association of Fire Chiefs.*
CHIEF HAROLD HURT,
*President, Major Cities Chiefs Association.*
SHERIFF MARGO FRASIER,
*President, Major County Sheriffs' Association.*
SHERIFF AARON D. KENNARD,
*President, National Sheriffs' Association.*

Mr. MCCAIN. Mr. President, I will quote from some of the letter. It says:

We are writing to express our strong support for your proposed amendment to S. 2805 . . . to establish a firm date to provide additional radio spectrum for our Nation's first responders.

What is the situation today? The situation today is that there are television stations that are on frequencies, channels 60 through 69, that will remain there forever under the present situation. In other words, in an appropriations bill—not through the Commerce Committee but in an appropriations bill—language was included that said that the broadcasters do not have to achieve a transition from analog to digital until 85 percent of the viewing audience in America had access to HDTV.

In testimony before the committee, Chairman Powell of the Federal Communications Commission said that is never. That is never, he said—or decades. We have to get this spectrum freed up so we will have it available for all of our first responders so in the case of a disaster or an attack, they will have the ability to communicate with each other.

As the letter points out, in 1997, and that was 7 years ago:

. . . Congress required that certain television broadcast spectrum be reallocated for public safety use, but limited access to that spectrum until the uncertain end of the digital television transition.

The problem is, for 7 years, since we assigned that date, we have not made that transition and, as I stated, if Chairman Powell is correct, we will never make that transition to the point where the analog spectrum would have to be returned.

The letter from these public safety and first responders states:

We urge the Senate to reject amendments to your proposal that would add uncertainty for public safety spectrum viability. Without a firm date, State and local governments will not be able to proceed to plan, fund or construct new interoperable radio communications systems.

That is the heart of it.

I repeat that the reason I am proposing this amendment is because the 9/11 Commission stated this as one of their urgent recommendations that needed to be acted upon.

I have been made painfully aware over the years of the power and influence of the National Association of Broadcasters. In 1997, they got billions of dollars worth of digital spectrum. They have sat before our committee and promised that by 2003 or 2004 all of it would be returned—all of their analog spectrum would be returned. And, of course, they were able to prevail time after time. I am not going to waste the valuable time of this body describing how they were able to do that. But we are now facing a situation where we have to get this spectrum freed up. We have to do it.

Some will argue it is not enough. We have had testimony before our committee that we need more spectrum for public safety; that we need more for first responders. But right now we don't have enough. Right now. We need to clear this up.

Let me also point out who is sitting on the spectrum channels 60 to 69. Unfortunately, a lot of it is Hispanic television. Some of it is religious broadcasters, and by moving them off that spectrum it obviously would be somewhat discriminatory. The spectrum is being used, as I mentioned, in television broadcasting. This amendment would authorize auctioning off the analog spectrum that is not used and the proceeds from that would be used to purchase set-top boxes for those individuals or families who are still only receiving over-the-air television.

I remind you again why the spectrum is so critical. It is not a new issue. In 1995, the Federal Communications Commission and the National Telecommunications and Information Administration established a Public Safety Wireless Advisory Committee to evaluate the needs of Federal, State, and local public safety officials through the year 2010. The committee included distinguished experts from public safety agencies, equipment manufacturers, commercial service providers, and the public at large. This organization filed its report on September 11, 1996, making key recommendations. The first recommendation was stated quite directly: ''More spectrum is required.''

The committee explained, ''In the short term''—talking about 5 years, talking about 1996 when their report was issued—''approximately 25 Megahertz of new Public Safety allocations are needed. The present shortages can be addressed by making part of the spectrum presently used for television broadcast channels 60–69 available as soon as possible.''

That was back in 1996.

Among other recommendations, the PSWAC noted, ''Funding limitations will remain a major obstacle in the adoption of needed improvements in Public Safety communications systems. At a time when government budgets are tight, alternative methods of funding future Public Safety communications systems must be identified. Otherwise the substantial benefits afforded by technology will not be realized.''

The recommendations of this distinguished commission are as true today as they were 7 years ago. And yet we have continued to fail to deliver this spectrum to public safety.

In 1997, I chaired a hearing examining public safety spectrum issues. My committee heard first-hand accounts of the troubles experienced a the Oklahoma City bombing. We heard chilling testimony from Oklahoma City Council Member Mark Schwartz about the day of the bombing. He said, ''We had our trailer command post, the State, the

county, the Feds: We were next door to one another, because we could not communicate in any other way in our crisis.'' He told the story of standing with an FBI agent whose cell phone was not operating. The only way the agent could communicate with Washington was through a friend of Mr. Schwartz in Florida who had two phone lines in his house. The friend used one line to talk to Oklahoma City and the other line to talk to the FBI in Washington. Mr. Schwartz explained, ''You could not use your cell phones, because they were jammed. Southwestern Bell at this time went down. . . . This is why this additional public safety spectrum has to be in place. Because it means saving lives. And I do not care where it is in this country, the public is entitled to it.''

That hearing was 7 years ago. We are no better off today. The 9/11 Commission report made the following observation: ''The inability to communicate was a critical element at the World Trade Center, Pentagon, and Somerset County, crash sites, where multiple agencies and multiple jurisdictions responded. The occurrence of this problem at three very different sites is strong evidence that compatible and adequate communications among public safety organizations at the local, State, and Federal levels remains an important problem.'' Nothing has changed.

What happened during those 7 years? Congress got the message, at least partially, following the PSWAC report. In the Balanced Budget Act of 1997, Congress allocated 24 megahertz to public safety. Big win for public safety, right? Wrong. The 24 megahertz was just an empty promise. Why? Because broadcasters insisted on an exception to this requirement. That exception continues to exist today with no end in sight. Under current law, public safety will not receive access to the spectrum until completion of the digital television transition. I asked FCC Chairman Powell at a hearing earlier this month, ''if neither the FCC nor Congress took any further action, when do you think the digital television transition would be complete? He replied, ''decades.''

We cannot wait decades. We cannot stand by while another Oklahoma City or Pentagon or New York incident occurs hoping for broadcasters to act in the best interests of the public rather than the best interest of themselves. We must act now.

The Wall Street Journal characterized the issue quite well on Monday: ''You would think that these days, Congress would be on a terrorism high alert, paying any price to keep the homeland secure. But there's at least one chink in Washington's antiterror resolve, as was evident in the U.S. Senate last week. It involves the broadcasting lobby and the high-stakes politics associated with the transition to digital TV. Most people have heard about big D.C. lobbies like the ones for tobacco and guns. Compared with the broadcasters, though, they're but a few suburban moms writing letters. Multichannel News, a trade paper, says the broadcast industry is 'so potent it's considered immune from the laws of political physics.' ''

The article proceeds to describe the SAVE LIVES Act calling it ''an easy and obvious solution.'' But the article aptly describes the fate of the bill last week in the Senate Commerce Committee: ''But the broadcasting lobby liked virtually nothing about the bill, and senators couldn't muscle up the political will to pass it. The Commerce Committee voted 13–9 against the McCain proposal, approving a vastly watered-down alternative. Only four channels would have to be returned by 2008, and even that handover could be delayed indefinitely if broadcasters could persuade the FCC that doing so would cause ''consumer disruption.'' The National Association of Broadcasters, the main lobby group, says it is only concerned about preserving the ability of millions of Americans to watch free broadcast TV; it also says it is moving as quickly as it can toward digital television. Maybe. It's also possible that Congress, in doing the broadcasters' bidding, has managed a striking bifecta: a ridiculous technology policy that leaves it open to the charge of being soft on terrorists.

I ask my colleagues: If there is another disaster—and I pray every single night that there never is—whether it be a terrorist attack, whether it be a natural disaster, with which we are now becoming unfortunately more and more familiar, will we be able to tell the first responders that we have taken every possible action to give them the ability to communicate with one another to save lives?

I hope I can work out an agreement with my friend from Montana, who has a different philosophical view on this issue, which I respect. I hope I can work out an agreement with him so that we can move forward and close this loophole that has been created, at the same time understanding there are legitimate concerns that broadcasters have in arranging for this transition to take place. But we cannot have it be endless.

I yield the floor.

Mr. BURNS. Mr. President, the Senator from Nevada has asked for 5 minutes. I will let him have his 5 minutes now and I will follow him.

The PRESIDING OFFICER. Is there objection?

Mr. LEAHY. Reserving the right to object, and I will not object, is that 5 minutes on the amendment or on another matter?

Mr. ENSIGN. On the amendment.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Mr. President, very briefly, I rise in strong support of what Senator MCCAIN is trying to do. This underlying bill is acting on a lot of the proposals the 9/11 Commission has brought forward. It has recognized some serious problems we face in this global war on terrorism and has asked Congress to address those—at least some of those problems—in this bill. Senator MCCAIN has tried with this amendment to address some more of those problems.

Frankly, we do have a problem with first responders. They do not have the spectrum they need to be able to communicate properly during disasters. We have seen that a few times in the past. The 9/11 Commission has strongly recommended we take the kind of action Senator MCCAIN is trying to take today and free up the spectrum from the broadcasters, the spectrum they have agreed to give up next year—frankly, the hard deadline Senator MCCAIN has put forward is actually years out from that—and the broadcasters are now saying they cannot do that. It would be too expensive for them and cause all kinds of problems.

The broadcasters have had this spectrum for free for a long time. In the agreement—forgetting the digital spectrum—they were supposed to get off of the analog spectrum, which is part of the spectrum we want to give to some public safety groups for better communication.

This is not just a question of radios being able to work. In the future, with the technology that is out there, we are talking about video, about broadband over some of this spectrum that will make our first responders much more effective in the jobs they are doing.

The amendment Senator MCCAIN has brought forward will not only help first responders in the case of a terrorism attack, but it will also do a lot of good things for our economy. Freeing up this much spectrum will probably raise, according to estimates I have seen, around $50 billion for the U.S. Government to help with the deficit. It will stimulate investment in America. It will create jobs.

There will be incredibly exciting new technologies brought forward that we cannot imagine today if this spectrum is freed up.

It also goes to the heart of American competitiveness. We are falling behind on a technology front from the rest of the world. We have to deploy broadband widely across America. Spectrum is a very important part of deploying broadband, and it is critical that we move this process forward, that we not let a special interest group block what will benefit virtually every American.

I rise in strong support of the McCain amendment. I am hopeful we can get this worked out, if not on this bill, on a bill in the near future.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Montana is recognized.

AMENDMENT NO. 3773 TO AMENDMENT NO. 3766

(Purpose: To ensure the availability of electromagnetic spectrum for public safety entities)

Mr. BURNS. Mr. President, we do not want to prolong this debate because we have already discussed it in the Commerce Committee. I have a second-degree amendment that tightens that loophole down a little bit, but I want to set the record straight.

The 9/11 Commission recommendation read this way:

Congress should support pending legislation which provides for the expedited and increased assignment of radio spectrum for public safety purposes.

That is all it said. There is spectrum available if the FCC would only assign it.

When we accelerate the transition to digital we are taking the small market television people almost off the air. In fact, some would say that we are turning off about 73 million TV sets. As long as you set a hard date on a transition, those who would supply the equipment for that transition that you have to have, it seems as though the prices never come down.

I have been in the market a little bit. I might have rode in town on the last load of pumpkins, but I didn't fall off the load and break my head. As long as there is a date there, the price will stay high and some of the little stations will never be able to make the transition.

I have the smallest TV market in the United States called Glendive, MT. It is 258th in all the markets. They cannot afford that. In 1998, I sent a check down there to buy the time when I was running for the Senate, and the buy was the biggest buy they had all year. They called me back and wanted to know if I wanted them to send the deed to the station. They thought I had bought the station.

That is what we are looking at. Do we want to take off these little stations? We are talking about public safety—free over the air. Television does weather, a lot of announcements and public service in our local news. How many people could not take their eyes off the televisions in this market whenever these twisters were going around in advance of and behind all of the hurricanes and the leftover hurricanes that come through this area. Do we want to lose those free over-the-air broadcasters? I don't think so, not with the service they provide to our local communities.

We have talked with the first responders, and we have done a lot of work with the first responders. We have a bill on the Senate floor today called E 9–1–1, and the heart of that bill is to make sure that every time you pay your phone bill you pay a little tax, and that money goes to the States so that these communication centers can upgrade, modernize. When you dial 9–1–1 on your cell phone, they can locate you as if you dialed in on a wired line.

I think that is a no-brainer. It only took 4 years to pass the original bill. Now we have to make sure the money goes to the right place. Senator CLINTON of New York and I have been working on that for 2 years. And it still hasn't passed.

This underlying bill we are talking about, as recommended by the 9/11 Commission, this legislation should not even be on this bill because they are talking about intelligence. They are talking about if something bad were to happen in this country. We are talking about after it happens, and that is a whole new kettle of fish.

I am offering a second-degree amendment in the form of a substitute. Basically, it tightens up the loophole that the Senator from Arizona is so concerned about.

I will read it into the RECORD:

(B) to the extent necessary to avoid customer disruption but only if all relevant public safety entities are able to use such frequencies free of interference by December 31st, 2007, or are otherwise able to resolve interference issues with relevant broadcast licensee by mutual agreement.

That is what we are saying, that the first responders have to ask for it. I will tell you, and I agree with the Senator from Arizona, we are going to lose some stations—and those channels, some of them are minority stations—as a result of this legislation.

I appreciate where the Senator from Arizona wants to go, but I will tell you, market forces usually do a better job in transitioning us into a new era than hard and fast dates do. They do it in an economical sense and let everybody, all competitors, compete and survive in the marketplace.

We know there is going to be demand for high-definition television. I can remember, in 1991, going to the Consumer Electronics Convention in Las Vegas. Do you know what they wanted to do? They wanted the Government to set the standards of high-definition television. My message then was: You do not want the Government to set standards, because when we put them in law, they are there for a long time. Your competition is international. You set the standards. The industry sets the standards, the standards in which they can compete and still make the transition to and use the new technologies that are to come.

That is basically what we are talking about. So I offer this amendment in the form of a substitute and ask for its adoption.

I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, I presume we are about ready to perhaps dispose of this amendment.

The PRESIDING OFFICER. Is the Senator from Montana sending an amendment to the desk?

Mr. BURNS. I can do that.

Mr. LOTT. Mr. President, while the amendment is being sent to the desk, let me say I appreciate the way these two Senators and all involved have worked this out. I think this is a suitable arrangement. The spectrum issue and its availability to first responders is very important. But this loophole was an opportunity for the spectrum issue to be avoided, perhaps in perpetuity.

I think the language we have here is reasonable language. I commend my colleagues for being willing to work through it where we will not have an extended debate through the afternoon, which is the right thing to do.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I join with the Senator from Mississippi in thanking and congratulating Senator MCCAIN and Senator BURNS for this agreement. I also thank Senator LOTT for his part in securing this agreement. I know he was very helpful. They really reached not only an amicable but a meaningful compromise on how to accomplish one of the goals of the 9/11 Commission, which in its report describes the consequences of the inability of public safety officials to communicate at the World Trade Center, the Pentagon, and in Pennsylvania.

The Commission recommended, specifically, that the Congress ''support pending legislation which provides for the expedited and increased assignment of radio spectrum for public safety purposes.''

Senator MCCAIN offered an amendment. The potential existed not only for disagreement about it but for very long debate which would have made it hard for the Senate to move forward expeditiously on the urgent underlying legislation. Senator BURNS and Senator MCCAIN have reached an agreement which is meaningful. It gets something done. I might say, I hope and believe that it may set a precedent for other amendments pending.

There are a lot of people who have said we face some intractable issues on this bill, but here we see clear evidence we can work through these issues and, in that sense, set a precedent for how we can work through the other pending issues on this bill.

I thank everyone involved. I will strongly support the amendment.

The PRESIDING OFFICER (Mr. CORNYN). The Senator from Arizona.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Burns amendment be proposed as a second-degree perfecting amendment to the McCain amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. MCCAIN. I think that clears up the parliamentary situation. So we are now considering the Burns second-degree amendment to the McCain amendment.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Montana [Mr. BURNS] proposes an amendment numbered 3773 to amendment No. 3766.

Mr. MCCAIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. MCCAIN. That clears up the parliamentary situation.

I thank my friend from Montana. I know how involved he has been on this issue. I was referring back to a hearing we had in 1997 on this issue. I do thank him. This compromise is certainly not what he wanted and it is not what I wanted. I also thank Senator LOTT for his good offices in helping, as well as the cooperation of the staffs, as well as that of Senator HOLLINGS and his staff.

Again, this is not what I wanted. This is not what Senator BURNS wanted. But this is a way to achieve the primary recommendation of the 9/11 Commission, which is to free up spectrum for first responders.

I will not quote again because I do not have it right here, but it is important we get this spectrum to our public safety and first responders so they will be able to communicate in case of a disaster or attack.

The compromise amendment modifies my proposal by eliminating the requirement that all broadcasters vacate the analog spectrum by a date certain. Significantly, this compromise still provides the certainty that public safety was seeking, that they will receive the spectrum they were promised in 1997 by January 1, 2008.

This was not my preference on how to proceed. I never believed in treating broadcasters differently. However, this amendment does so by requiring broadcasters on channels 62 through 69 to vacate their spectrum if there is a bona fide request made by public safety. The NAB is supporting this amendment and has decided to treat its members differently.

This approach has been agreed to by Senators BURNS, HOLLINGS, and myself. Again, it was not my preference to proceed in this discriminatory manner, but in the interest of ensuring passage this year, I thought this was a positive step for public safety. However, I remind my colleagues this disparate treatment should be reviewed by the FCC this year.

The FCC can remedy this discriminating treatment by completing its work toward ending the DTV transition. I urge the FCC to do so. I also urge the incoming chairman, Senator STEVENS, and Chairman BARTON of the Commerce Committee in the House to review this discriminatory treatment and the DTV transition upon Congress's return in January.

Lastly, I remind my colleagues that this approach does not provide public safety the much needed money for equipment or consumers, a subsidy to ensure all over-the-air viewers can continue to view television. It was not my preference to strand public safety or consumers in this manner. I hope in the near term Congress will readdress this need to support public safety equipment funding. I thank my colleagues.

Mr. President, I do not believe there would be any further debate. I think the Senator from Montana would agree to have a voice vote.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I thank the Senator from Arizona, the Senator from Montana, and the Senator from Mississippi for working on this issue. I very much appreciate that. I urge adoption of the amendment by a voice vote.

The PRESIDING OFFICER. Is there further debate on the amendment?

If there is no further debate, without objection, the second-degree amendment is agreed to.

The amendment (No. 3773) was agreed to.

The PRESIDING OFFICER. Is there further debate on amendment No. 3766, as amended?

If not, without objection, the amendment, as amended, is agreed to.

The amendment (No. 3766) was agreed to.

Ms. COLLINS. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3774

Mr. MCCAIN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for himself and Mr. LIEBERMAN, proposes an amendment numbered 3774.

Mr. MCCAIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. MCCAIN. Mr. President, on behalf of myself and Senator LIEBERMAN I propose an amendment that includes a number of the national preparedness provisions recommended by the 9/11 Commission and is similar to the related proposal we introduced as part of S. 2774 on September 7. It does not address the issue of homeland security grants or spectrum allocation, as those issues will be addressed separately. I believe that this amendment will be non-controversial, and I hope that my colleagues will support it.

One of the lessons that we learned from the terrorist attacks of September 11 is that not only was our country not prepared to prevent the terrorist attacks, but we were not adequately prepared to immediately respond to the attack. One of the fundamental lessons learned is that we need to do more to prepare our first responders and the general public to respond to a terrorist attack.

The stories of the New York City Police Department not being able to communicate with the New York City Fire Department have led serious efforts to increase the amounts of money devoted to increasing interoperability. Lives of the brave men and women of the fire department and the people working at the World Trade Center were lost during the terrorist attacks due, in part, to a lack of communication and the lack of a coordinated strategy to respond to large scale disasters. We must continue to work to ensure that we equip our first responders with the equipment and training necessary to ensure both their safety and their ability to carry out their critical missions.

The Commission's report emphasizes the importance of teamwork, collaboration, cooperation, and the involvement of key decisionmakers. Their recommendations build upon these themes. The report recommends that emergency response agencies nationwide should adopt the Incident Command System to ensure that there is a command structure in place when responding to an emergency. This amendment expresses the Sense of Congress that the Secretary for Homeland Security require homeland security grant applicants aggressively implement the ICS and unified command systems. The amendment also would follow the Commission's recommendation to remedy the long-standing liability and indemnification impediments to the provision of mutual aid in the National Capital Region.

Consistent with the recommendations, the amendment also would direct the Secretary of Homeland Security to work with the Federal Communications Commission, the Secretary of Defense, and State and local government officials to encourage and support the establishment of consistent and effective communications capabilities in the event of an emergency in a high-risk urban area. The Secretary is also directed to work with the Secretary of Defense to plan for supplying additional back-up communications support in the event of an emergency.

As pointed out by the 9/11 Commission, the private sector controls approximately 85 percent of the critical infrastructure in the Nation, and the report therefore places particular emphasis on the importance of private sector preparedness. The Commission report endorses the American National Standards Institute, ANSI, and National Fire Protection Association, NFPA, voluntary Standard on Disaster/Emergency Management and Business Continuity Programs. The amendment would direct the Secretary of Homeland Security to establish a program to promote private sector preparedness for terrorism and other emergencies, including urging companies to adopt this ANSI/NFPA standard.

In striving to protect our Nation from the threat of terrorism, we must continuously analyze our weaknesses and prepare for the threats of the future. This amendment directs the Secretary of Homeland Security to fulfill this important responsibility by reporting to Congress regularly on his work to complete vulnerability and risk assessments, and the adequacy of the government's plans to protect our Nation's critical infrastructure.

As our Nation continues to stand vigilant against the threats of future terrorist attacks, this amendment takes on additional meaning. Despite all the work done since September 11, it is likely that we will be struck by terrorists again. We must continue to work to ensure that we are ready to respond to any attack. This amendment strives to get us closer to that goal.

Again, I believe that this amendment should be noncontroversial, and I urge my colleagues to support it.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I commend the Senator from Arizona for his amendment. It would implement five important recommendations of the 9/11 Commission that would improve our national preparedness. This amendment would support efforts underway to ensure that Federal, State, and local entities all use what is known as the incident command system. I know that our first responders in Maine are leaders in the Nation in using and training with this system. They have told me how critical it is for effective response to terrorist attacks for there to be a working command structure in place. This can only be accomplished with training and organization before an attack or other such emergency.

Senator MCCAIN's amendment would enable the first responders protecting our Nation's Capital to save lives regardless of which side of the Potomac they happened to be on. It does that by establishing an interstate mutual aid compact in the Washington, DC area. It would encourage coordination and communication in urban areas. It would encourage private sector preparedness and help private industry to be better prepared for an attack as well. It would ensure that a nonregulatory, voluntary program be established to promote preparedness within the private sector, using a consistent methodology to address preparedness.

Finally, it encourages the Department of Homeland Security to take a hard look at critical infrastructure, which the Department is already doing, and report to Congress about its findings.

I urge my colleagues to accept the amendment.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I am proud to be a cosponsor of this amendment with Senator MCCAIN. It is part of legislation that we introduced early in September, along with Senators SPECTER and BAYH and others, to implement all the recommendations of the 9/11 Commission. This definitely complements the core of the proposal that Senator COLLINS and I and the members of the Governmental Affairs Committee made to the full Senate.

The underlying bill would make historic changes to reform our intelligence community to do the best job we possibly can of knowing where our terrorist enemies are, what they are planning, and to strike at them before they can strike at us based on that intelligence.

We have to be prepared for occasions when terrorist attacks may succeed. That is exactly what this measure is all about. It is preparing our local communities to join in the prevention of attacks and then to improve the public and private infrastructures to be ready to respond in the best possible way.

The 9/11 Commission recognized that even big cities with first responders and public service systems that are highly well regarded can be overwhelmed by a terrorist attack as we saw on September 11. That is why this amendment would encourage people to come together, to work together to coordinate the capabilities of each of their communities into a greater unified force.

This amendment would, therefore, help promote integrated emergency command systems that give an array of response agencies at the local level clear roles and leadership in the event of a crisis.

Specifically, it encourages the Department of Homeland Security to condition its terrorism preparedness grants on evidence that the communities are adopting a so-called incident command system, a coordinated system which I have seen in effect in communities in Connecticut and around the country.

The amendment also calls on the Department of Homeland Security to help create emergency community capabilities in urban areas that are most likely to be targeted for terrorist attacks. This is the complement to the agreement between Senators MCCAIN and BURNS we just adopted.

Finally, the amendment urges the Secretary of Defense to regularly report on the plans and strategies of NORTHCOM, the northern command, the new command designed to defend, through the military, the U.S. homeland. We want to know more about the role envisioned for NORTHCOM, to ensure that the unique capabilities of the DOD are well organized, prepared, and available should the President need to activate them for the defense of our homeland.

Together these provisions are going to bolster our defenses against terrorism, even as the underlying bill—if I can put it this way—works to strengthen our offense, which is the offense of the best, most coordinated intelligence system we can have.

I strongly urge my colleagues to support this amendment.

Before I yield the floor, if there is no further debate, I believe this is a noncontroversial amendment, though a substantial one, and I urge its adoption.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, without objection, the amendment is agreed to.

The amendment (No. 3774) was agreed to.

Mr. LIEBERMAN. I thank the Chair.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. INOUYE. Mr. President, I rise this afternoon to address the question of intelligence reform and the future of our national security establishment.

I believe this is the single most important issue to be addressed by the Congress this year. Today, the Senate is considering legislation which would overturn the current structure of the intelligence community, primarily in response to the recommendations of the Commission established to review the tragedy of 9/11.

While I agree that improvements are needed, I urge all of my colleagues to approach this matter very cautiously. We live in interesting and very dangerous times. Many felt that with the collapse of the Soviet Union we had entered into a new era of world peace. I think most of us here recall that we, the President and the Congress, immediately proceeded to claim a peace dividend, and we sought to reap its benefits by cutting back on national security spending. Perhaps it was the right thing, in a world that had indeed fundamentally changed, to reduce our national security spending. Important programs in both defense and intelligence were curtailed.

In hindsight, some now question why certain areas of the budget were reduced. As the Cold War ended, it was clear we needed to review our national security programs. For 45 years, our defense and intelligence capabilities had keenly focused on the Soviet Union. We had devised weapons systems, strategies, and intelligence capabilities, all designed to counter that threat. Since the fall of the Berlin Wall, our leaders have been working to adjust the focus of our national security apparatus to de-emphasize certain elements of our strategy and accentuate others. These changes have taken a long time and some have met resistance. Those of you who know the military history might recall that during World War I, with the advent of tanks and other motor vehicles, it became apparent that the horse cavalry was obsolete; it simply had no place on the 20th century battlefield. Yet while that war ended in 1917, it took until the 1930s for the Army to completely eliminate the horse cavalry from its ranks.

In his highly acclaimed account of the Cuban missile crisis, ''The Essence of Decision,'' Graham Allison explains how President Kennedy was surprised when Khrushchev wanted to negotiate the removal of our missiles from Turkey, while he removed missiles from

Cuba, but President Kennedy had already directed that the Turkish missiles be removed.

After 42 years in the Senate, I am aware of how frustrating it can be to change the massive national security bureaucracy. It has frustrated the reformers in those agencies who recognize what needs to be done. Each Secretary of Defense and CIA Director since 1990 has worked to change the emphasis of these agencies from a Cold War focus, and they are succeeding, albeit very slowly.

The Congress can legislate changes, but that is only half the battle. As President Kennedy discovered, those who have to implement these changes must do so. We should not be fooled into thinking this bill will be fully implemented, unless it does right by the agency it seeks to change and is supported by them. As written, I do not believe this bill meets that test.

It is clearly our responsibility to make constructive recommendations that can lead to improvements in our national security bureaucracy. That is what the people expect of us. We must be sure that the bill we pass is in fact constructive and will not create greater problems than it solves. If we pass legislation that fundamentally alters the current intelligence structure, we can ensure that it will lead to a period of several years during which the new intelligence community will experience growing pains.

Furthermore, if, in our attempt to strengthen the control of the head of intelligence, we disenfranchise those it is supposed to support, the impact of this bill will clearly be adverse. I understand the frustrations of my colleagues and of all Americans who suffered because of 9/11—those who lost loved ones in particular, but in reality all Americans because our lives were changed by that tragedy.

Every Member of Congress wants to improve our defenses against any further terrorist attack. I say to each of my colleagues again, what is most important, what is absolutely critical is that we make changes that are positive, that improve our national security structure, and that do not have unintended consequences that could jeopardize our security.

We all recognize that we face a new enemy, one that knows no borders and operates beyond the norms of civilized society, but we also know that we have 130,000 troops standing in harm's way, who face a threat significantly different than the one we face here at home.

The new national security system we create must allow us to meet both of these challenges, as it must be able to protect us from the proliferation of weapons of mass destruction and from the threats of nations that might seek to harm us, our allies, or our interests around the world.

I often remark that we have the greatest military in the world, perhaps in the history of mankind. Our young men and women who put on the uniform of this country serve us magnificently. Let me remind you that it is only 1 percent of our citizens who serve in our Armed Forces to protect the remaining 99 percent of us. We are truly in their debt.

It is for them that I strongly support a robust budget to strengthen defense every year. It is also for them that we must ensure we do nothing to weaken the support they get from the intelligence community.

I would like to note that, in addition to our military, our Nation is lucky to be served by the men and women in our intelligence community.

They represent the best in public service. There are those who have criticized our intelligence community since 9/11, but the men and women in this field are truly dedicated, patriotic Americans. In seeking to change how we manage intelligence we must be sure that we remember those who serve in both of these communities.

We are focusing on intelligence reform in this bill because there is need for further improvement. The tragedy of 9/11 and the faulty intelligence which had many believing that Iraq had weapons of mass destruction demonstrate that our system is not perfect. It was exactly these problems which led the 9/11 Commission and many others to call for reforming intelligence.

Like all Americans I commend the Commission for its work. It did a masterful job of reviewing the facts, combing through the massive data, and presenting the results in clear and concise prose. Their report provides a great reconstruction of the events of 9/11 and why it occurred. However, some not that the conclusions they draw may not be fully justified by the facts they uncovered.

Last week, the Appropriations Committee received testimony from several expert witnesses. We heard from a distinguished jurist, Judge Richard Posner, who studied the 9/11 Commission report and was disturbed by its recommendations. He concluded that the Commission went way beyond the evidence presented.

The Commission contends that we had an intelligence failure, that it was a systemic problem as opposed to several mistakes being made by our intelligence community. They blame it on a failure to connect the dots and a lack of imagination.

In their analysis, and also cited by the Committee, for example, they note that several terrorists met in Malaysia and that a few proceeded from there to the United States and took part in the attack on 9/11. They conclude with hindsight that the CIA should have recognized that these terrorists were linked to the bombing of the USS *Cole* and should have informed the FBI and the State Department about the meeting.

It is this type of evidence which the Commission and the Governmental Affairs Committee both cite as the justification for an overhaul of our intelligence infrastructure.

We all wish that our analysts would have been prescient enough to recognize the relationship among these terrorists, and their connection to the *Cole* bombing, and the importance of the Malaysian meeting.

We all wish that these same analysts would have made that information available to the FBI and State Department where there exists a possibility that it would have triggered an investigation of their movements here. But I for one believe it would have taken a lot of luck for that to have happened—more than simply connecting the dots or having better imagination.

Consider this point. It has been more than 3 years since the attack on our Nation. In that time, we have devoted billions of dollars and we have sacrificed many young lives in the war on terrorism, but as far as we know, Osama bin Laden remains hidden from view directing the farflung al-Qaida network.

Would anyone seriously claim that we have not worked hard enough to connect the dots since 9/11?

Intelligence is a tough business. Like me, many of our colleagues have been involved in intelligence oversight for the Congress. I am not telling them something new.

We have witnessed advances in communications and in command and control and other technologies which have revolutionized intelligence. But, with all the highly sophisticated tools in our arsenal, we still can not find Osama.

Earlier this year, former CIA Director Tenet testified to the Congress that it would take another 5 years before we had successfully rebuilt an inadequate human intelligence capability in the war on terror. Some immediately held up the Director's statement as an indication that we have not addressed human intelligence requirements. And that is simply not the case.

For 50 years we promoted human intelligence, but our focus was on defeating international communism in places where it was taking root, primarily in Europe, Asia, and Latin America. In some cases it takes a generation to build a human intelligence network. When we took our peace dividend, we set back the efforts to refocus human intelligence on newer threats.

When the Director says it will take another 5 years, it is not because we haven't been responsive since the rise of al-Qaida. Should we have been working on this more vigilantly? Maybe. But I ask you: Who among us knew at the end of the Cold War that the greatest challenge we were likely to face in the future would come from the son of a Saudi construction magnate?

Had we known that at the time of Desert Storm, could we have convinced all of our colleagues that there should be no peace dividend because we needed to prepare for al-Qaida? We all know the answer to that.

So I ask you: How will changing the intelligence structure solve this dilemma? Will it allow us to grow our human intelligence capability overnight? Obviously not, but it could distort the working relationship among the various agencies so that intelligence support is harder for the agencies, such as the Defense Department, to get.

That could lead agencies with the financial wherewithal to provide that capability internally. That outcome would be expensive and very harmful.

The Commission looks at this issue only through the lens of terrorism, and seeks to ensure better coordination within the community.

In so doing, it fails to consider the varied responsibilities and needs of all the actors which depend on intelligence.

As you know, as ranking member of the Defense Appropriations Subcommittee, I have access to virtually all of our Nation's secrets, including those in the Defense Department and in intelligence programs as well.

Over the past 3 years our Committee has been informed of multiple threats, most of which have never been publicized. The intelligence community must treat each warning with utmost care. They must research and investigate each one to determine its veracity, and then respond appropriately to those incidents which are deemed credible.

In many cases what some call connecting the dots is really like searching for a needle in a haystack. And, just to make it more difficult, there are many hay stacks to examine and in some cases the needle looks exactly like hay. Sure the needles are there and theoretically they could be found, but should we really expect our analysts to find them every time?

Furthermore, I want everyone to realize that we are not standing still. We have come a long way in improving intelligence cooperation.

We created the Terrorist Threat Integration Center to bring analysts from various parts of the community to work together.

The enactment of the PATRIOT Act brought down a wall which had previously blocked information sharing between various parts of the intelligence community and the FBI. Our defense and intelligence leaders are working to break stovepipes and to ensure that information sharing is working.

Certainly more improvements are needed in intelligence cooperation and in new technology to improve information sharing.

Our Nation has the finest national security apparatus—defense and intelligence—in the world. It is not perfect and it never will be. Some areas can be improved. But it is a critical capability.

Our warfighters—our young men and women who, as we speak, are serving in harm's way—depend on seamless intelligence. It is our solemn duty to ensure that we can continue to provide them the best. We must make sure that we do not inadvertently take actions which could sever the link between our defense capabilities and intelligence support.

We cannot take the Secretary of Defense out of the loop simply because we seek to strengthen the head of the intelligence community.

So what changes shall we make to improve the intelligence capability of this country?

First, I would suggest, as recommended by the Commission and the Governmental Affairs Committee, that we establish a national counterterrorism center.

The one real failing of the intelligence community in preparing for 9/11, be it in the FBI, the CIA, the NSA or other organizations was the inability or unwillingness to share terrorist intelligence and analysis completely and seamlessly among the disparate parts of this community.

Many improvements have already been made, but the one reform that truly can respond to the cries from the families of 9/11 victims is to address this issue, and to address it now. This is the most critical change that needs to be legislated and our Intelligence and Armed Services Committees need to follow up to make sure it is implemented and is effective in conducting it mission.

That center needs to be the clearing house for all intelligence on counterterrorism, both foreign and domestic. It needs to work across disciplines and agencies, and it needs to have the support of all of the intelligence community. It needs to be the analytical capability for the community in the field of counterterrorism.

We need to join foreign and domestic analysis together to be sure that we get the full intelligence picture. However, because this Nation believes that foreign and domestic intelligence programs must be separated to ensure that civil liberties and the rights of all Americans are safeguarded, I would urge my colleagues not to give this organization any operational role.

It certainly should conduct analysis and strategic planning, but operational planning and operations should continue to be handled as they are today through other parts of the intelligence community working with the Defense Department overseas and the FBI working here at home in conjunction with other relevant domestic agencies.

I believe that as we establish this new organization, the national intelligence director's charter should ensure that this national counterterrorism center receives the resources it needs and that the director should focus his efforts on this one challenge in its first year of existence.

I agree with the managers of the bill that other intelligence centers may need to be created, but I believe the decision to do so should come from the President based on the recommendation of the national intelligence director with the concurrence of the National Security Council and the Congress.

Most important, we have to make sure we come up with the right solutions for the rest of the intelligence community. What may be right for counterterrorism may not be the solution that best serves our intelligence needs for weapons proliferation or for our military. For those reasons, I am not comfortable with rushing this process.

Some criticize the community for a ''group think'' outlook. They say that the analysis that indicated that in all probability Iraq was in possession of weapons of mass destruction is an example of group think. I am one who questioned the results of that analysis.

With hindsight, I speculate that the community failed because it tried to provide policy makers the answer they wanted rather than a fair interpretation of the facts. Nonetheless, if group think was a problem, how will that be improved by greater centralization of the analytical capabilities in the community? Won't that only exacerbate that problem?

And by creating a more powerful intelligence director with a closer tie to policy making, won't that likely lead to more attempts to sway analysts to reach politically acceptable conclusions?

These are the troubling facts that were not addressed by the 9/11 Commission and are not adequately considered in this bill.

Last week, the Appropriations Committee received testimony from seven witnesses, all of whom are experts in the field of national security and counterterrorism. Included among them were Dr. Henry Kissinger, the current head of the Center for Strategic and International Studies, and former Deputy Secretary of Defense, Dr. John Hamre.

I do not believe I would be overstating their views to say they were quite concerned with the legislation being proposed by the Governmental Affairs Committee.

Their counsel was to be cautious. Dr. Kissinger recommended that Congress study this issue more carefully.

He urged us to take another 6 months before we moved forward on what is the most significant Government overhaul since the National Security Act of 1947.

Last week, noted experts in national security, including former Secretary of State George Shultz, former CIA Director William Gates, former Secretaries of Defense Bill Cohen and Frank Carlucci, and former Senators Nunn, Hart, Bradley, Rudman and Boren, all recommended that the Congress proceed cautiously. They urged all of us to remember the old medical adage: First, do no harm.

This is a most important debate and a most important issue. I know some of my colleagues worry that if we do not

act now we will lose the opportunity for significant change. I recognize this concern. But enacting bad legislation in haste because there is a popular demand to act is not the proper way for this body to respond.

The Senate was created to cool the passions of the people. Our history, our culture, even our rules are all deeply instilled with the concept of proceeding cautiously.

I urge my colleagues to agree with those of us who recommend beginning the process of reform by establishing a new central authority for intelligence, a national intelligence director, any by responding to the specific challenges raised by the events of 9/11 with the creation of a national counterterrorism center.

But I believe we need to give a new administration and Congress more time to determine how the rest of the national security apparatus will be structured. Let us use the coming year to determine how we balance the additional responsibilities and share power among the various components of our national security agencies.

This matter is too important to rush through in 2 weeks in the heat of a Presidential campaign. Please let us act responsibly.

I yield the floor.

Mr. LIEBERMAN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Ms. COLLINS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Ms. COLLINS. Mr. President, I want to give my colleagues an update on an amendment that was offered yesterday. It is an amendment that was offered by Senator WYDEN on behalf of himself, Senator SNOWE, Senator GRAHAM, and Senator LOTT. I believe we have reached an agreement on a compromise to that amendment, which deals with declassification. Actually, I recall the Presiding Officer, Senator CORNYN, is also a cosponsor of the amendment.

We have been able to work out an alternative to the amendment. We are just waiting for language to come from legislative counsel. It is my hope, and I believe the hope of Senator LIEBERMAN, that we will be able to dispose of that amendment this afternoon.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I thank the chairman. That is certainly my hope. I am grateful that all the parties have come together about this amendment. I think we have a solution that doesn't create another board but does realize the goals that Senator WYDEN and the other bipartisan sponsors of the amendment have, to have a reasonable means of asking for a second look, if I can put it that way, at a classification decision made by the executive branch with regard to congressional access to intelligence information. I am very pleased about that and I hope we can get the language here and do it this afternoon.

I also say to our colleagues how important is the announcement made earlier today by the bipartisan leadership, Senator FRIST and Senator DASCHLE. I hope people will respond to it. First, I thank the two of them for the extent to which they have worked in support of the effort Senator COLLINS and I are making and that they are together in support of the effort, which is exactly the standard that needs to be set as we work on this critical national security matter.

Second, there is a clear message, which is that Senator FRIST and Senator DASCHLE may together move to invoke cloture unless there is a steady movement of Senators to the floor introducing their amendments, because there is an excessive—there is an indication of an intention to file over 200 amendments. Senator FRIST has made clear that we are not going to depart from Washington until we finish this bill and take action on the report of the working group, led by Senators MCCONNELL and REID, with regard to reform of congressional oversight of intelligence, as urged on us by the 9/11 Commission.

I am very grateful for that statement of policy by the leadership. We ought not leave here until the Senate completes its work on these two critically important matters. These are urgent. There would simply be no excuse to our constituents, to the American people at large, to have left for political campaigns while the Nation is under clear and present danger of terrorist attack, with a certain unsettling imminence suggested as we lead up to our national elections.

I join with Senator COLLINS in thanking our colleagues who have come to the floor with amendments; those, as was the case with Senators MCCAIN and BURNS, who worked out a very significant and real compromise on what could have been a long distraction on the road to adopting our proposal.

I hope people will now come to the floor. We will be here for a while more today. Obviously, we will be here tomorrow. Leadership told us we will be here Friday and Monday. The sooner we get these amendments in and consider them and dispose of them, the sooner we are going to pass this bill, move on to legislative reform, and recess.

With thanks for the pace we are setting so far and for the support we are receiving, I urge Members who have amendments to come to the floor and offer them at this time. We are open for business.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. DURBIN. Mr. President, I ask unanimous consent I be recognized as in morning business for 15 minutes.

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

(The remarks of Mr. DURBIN are printed in today's RECORD under ''Morning Business.'')

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, I ask unanimous consent that I be recognized for 2 minutes as if in morning business.

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

COMMODITY CHECK-OFF PROGRAM

Mr. INHOFE. Mr. President, I think we are all familiar with what the Commodity Check-Off Program is. It is a program that is voluntary in all commodities. It allows people to donate to the USDA a small percentage of profits in order to promote their product. This is something that has worked especially well, and something we are having a little problem with now because the USDA says if they change this amount, they do not have the authority to do it.

I will introduce a bill that will give them that authority. It is supported by all farm organizations, by the administration, by the Farm Bureau, by the Farmers Union. There is no opposition. I anticipate that it will be taken up on the floor, and I will introduce it in time.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). Without objection, it is so ordered.

Mr. DORGAN. Mr. President, I have asked the two managers of the bill if I might speak in morning business for a few minutes. Let me ask for 7 minutes, and if they need the floor to do business on the 9/11 Commission bill, I will give up the floor. I want to speak of something I think is very important.

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

DISASTER AID

Mr. DORGAN. Mr. President, first I will talk about disaster aid. I will talk specifically about disaster aid for family farmers in the northern Great Plains who have been hard hit.

We have been talking a lot about disaster aid for people who have been victims now of four successive hurricanes in the Southeast. God bless those people who have been victims of the hurricanes. They have had a difficult time. Perhaps none of us can understand how

awful it has been for them. Those storms have swept a wide tract across the southeastern corner of the United States.

I have always believed, in my service in the United States Congress, that for those who need help because of natural disasters, the Congress should help. I have always voted for assistance, when I served in the both the House and the Senate. The people who await the aid need to understand we want to make certain we provide this assistance during this difficult time.

In recent days, I have been reading reports about the disaster aid that the Senate included in the Homeland Security Appropriations bill. In that bill, the Senate included legislation dealing agricultural disaster assistance for family farmers around the country, not just in the Southeast. Now some are saying maybe the disaster aid we put in the Homeland Security appropriations bill will have to be stripped out. I want to talk about that for a moment.

It is critically important that we provide disaster aid not only for those people and those farmers in the Southeast, but also for other farmers around the country who have lost their entire crops due to weather-related disasters.

I was reading an e-mail from a young woman. She wrote an e-mail that I will paraphrase. It describes the culture of family farming and describes why I care so much and why some of my colleagues are so passionate about this issue. Her name is Annie. She writes that her dad is a farmer and was diagnosed with an inoperable brain tumor that proved to be cancerous. He has now been taking aggressive treatment. The prognosis is not great. She said: When we found out about dad's cancer, our neighbors told us not to worry about the farm. She said: My youngest brother was trying to manage the farm on his own this summer, but on August 25, 100 neighbors showed up at the farm with combines, grain carts, trucks, and semis to harvest the wheat. The local Case dealership donated some manpower and some machinery. The local crop insurance agency catered an outdoor barbecue to feed 150 people who worked.

She sent pictures of her dad, who is suffering from a brain tumor, but more importantly a picture of all the combines that came over, all the trucks, all donated, all from folks who showed up because they knew a neighbor was in trouble. It is part of the culture and the value system of family farming. The network of farms that dots the prairies in this country, especially in the northern Great Plains that I know so much about in terms of family farming, is part of the culture of this country.

A wonderful author named Richard Critchfield talked of the origin of family values that originated on family farms, and moved to small towns and big cities to refresh and nourish family values in this country. That is why family farms are so critically important.

In my part of the country this year we did not have hurricanes, but in the spring we had torrential rains. These are pictures of the same State. This is the southwestern corner of my State. It looks exactly like a moonscape, or perhaps the surface of Saturn, as we have seen in pictures. There is no vegetation, nothing growing. There has been a protracted drought. I had people tell me north of Hettinger, North Dakota, they had 2.2 inches of total moisture from January 1 to July 1—6 months, 2.2 inches of total moisture. Their land was destroyed; no vegetation at all.

This picture is the same State, the State of North Dakota, with a farmer standing in his field inundated by water. There were 1.7 million acres in North Dakota not planted this year. Let me say that again: 1.7 million acres could not be planted. Farmers like this farmer standing in the middle of his field risk everything. When they cannot plant their entire farm, they will go broke if they do not get some help. Drought and inundated by torrential rains, they could not plant 1.7 million acres, and in August, when the corn and beets needed heat units to grow, we had a freeze. It was a very unusual occurrence in North Dakota, but it froze in August, a frost that damaged some of these crops.

The Senate passed a disaster aid package for victims in the Southeast recovering from the hurricanes, and also passed an agricultural disaster aid package on the Homeland Security bill. We need to finish that job.

I hear and now read in the National Journal and Congressional Quarterly that some are saying it is likely we will not keep the agricultural disaster package in the Homeland Security bill through the conference committee, because we have some people who do not want that to happen. I would say to those people: There is not a difference between the reimbursement for a crop that was lost in northern Florida or a crop that was lost in northern North Dakota due to a weather-related disaster. They both occur in counties that are disaster counties. They both occur in a way that is devastating to the family farmer and will injure that family in an irreparable way unless this country says, We are here to help you.

I want to tell those who are saying this cannot be done: this must be done. We will help those folks who have been injured by the four hurricanes, but we will also insist on helping others across a wide band of this country who were injured by torrential rains and by a protracted drought in the heartland and parts of the West. There is a broad consensus in the Senate that disaster aid must be helpful also to family farmers in other parts of America. We cannot allow this to be dropped. We must continue to impress upon those who would not include this assistance that when we provide disaster aid, it must include all of those who have been affected and devastated by weather-related disasters.

If I might mention one additional point. We are currently dealing with homeland security and terrorism in the Senate. I commend the managers of the bill on both the Republican and Democrat side. I have watched the debate and the discussion. I think it has been wonderfully done, very professionally handled.

### NATIONAL REGISTRY OF CONVICTED SEX OFFENDERS

Mr. President, terrorism comes in many forms. Within our country, one form of terror is perpetrated by sex offenders.

I have introduced a piece of legislation to deal with this problem. I would like to describe why it is important that the Senate Judiciary Committee act on this legislation. And let me, at the outset, thank Senator HATCH, the Chairman of the Judiciary Committee, for his support of it.

Not quite one year ago, a young coed at the University of North Dakota was working at a shopping center in Grand Forks, ND. At about 5 in the afternoon, she left her job to walk out to her car. She was abducted and brutally murdered.

The alleged murderer is now in jail. He will be standing trial. This man had been incarcerated 23 years for violent sex offenses in Minnesota, and then let out of prison. He was considered a high-risk offender, but he was let out of prison to go back on the streets, with no monitoring of any sort.

That afternoon, when this young woman named Dru Sjodin walked out of that shopping center, her assailant was free to roam that parking lot, to abduct her and to brutally murder her.

After this tragic crime, I found out that there was a serious flaw in the way that sex offenders are tracked in this country. If you were living, for example, in Grand Forks, ND, as this young college coed was, and you checked the North Dakota sex offender registry, you would not know that violent sex offenders had been let out of jail in Minnesota and were living in your area, just a few miles across the state line.

I think there ought to be a publicly available national database of convicted sex offenders who are released from prison, so people are able to get a meaningful list of sex offenders in their area, including offenders across state lines.

I also think when a high-risk sex offender is about to be released from prison, the local State attorney ought to be notified, to determine whether to seek further incarceration for the protection of the public.

Third, if a high-risk sex offender is, in fact, released from prison, then there ought to be intensive monitoring following that person's release, for a period of at least one year.

In this case, a high-risk, dangerous offender was released from prison after

23 years. He was under zero supervision. A wonderful young coed from the University of North Dakota walked out of a shopping center. She was abducted at knifepoint and then brutally murdered.

Maybe we save some lives with a bill, which would be known as Dru's Law, that would require a national database to be made available to the American public through the internet.

Maybe we can avoid future circumstances where high-risk sex offenders are turned loose with zero supervision.

I thank Senator HATCH and Senator LEAHY. They have both reviewed this legislation, and both think it has merit. It is not something that would cost very much. It is something that has a great deal of common sense to it. I also thank Senators DAYTON, COLEMAN, CONRAD, JOHNSON, LUGAR, and DURBIN, who on a bipartisan basis have cosponsored this legislation.

I passed a piece of legislation very much like this about 2 years ago. A young woman named Jeanna North, who was 11 years old, was murdered in Fargo, ND, by a man named Kyle Bell. He was being hauled around the country by a private company that was contracted by the State to haul prisoners from one facility to another.

I do not think a convicted murderer should ever leave the arms of law enforcement, and turned over to a private company. But I found out it is done all the time. If they are going to haul a convicted murderer, a violent offender, they will often contract with a private company.

It turns out, they contracted with a company that took this man named Kyle Bell, this murderer, and hauled him around the country. They stopped for gas. One guard was asleep, the other was in buying a cheeseburger, and Kyle Bell crawled out of the bus and walked into a parking lot of a shopping center, wearing his street clothes, mind you.

That will never happen again. There is now a law on the books. It says if you are a private company hauling violent offenders, then there are certain responsibilities with respect to the restraints to be used, the clothing the prisoners must wear while being transported—bright orange clothing—and the Justice Department of the United States must establish consistent rules.

So what happened with Kyle Bell, the fellow who murdered young Jeanna North, is not going to happen again. Someone is not going to walk into a shopping center in street clothes because a private contracting company was transporting a convicted murderer and one was asleep in the van and the other was buying a cheeseburger and the convicted murderer walks off. That is not going to happen again.

Sometimes it is just a matter of common sense. It seems to me with respect to this issue of Dru's Law, dealing with high-risk convicted sex offenders, we can do much, much more, and we should do much, much more.

I, once again, say to Senator HATCH and Senator LEAHY, thank you for your cooperation. I know you have been working to see how we might move this legislation. I am looking forward to having it a part of other legislation that moves from the Judiciary Committee.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

AMENDMENT NO. 3704

Mr. LIEBERMAN. Mr. President, the Senator from Oregon, Mr. WYDEN, along with a very impressive bipartisan group of cosponsors, introduced an amendment of real import 2 days ago. We said we would try very hard to work it out. I am quite delighted and grateful that we have worked it out in a way that is acceptable to all involved and it accomplishes a very significant public purpose. I thank the Senator from Oregon for all he did to bring us to that point.

I happily yield the floor to him.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I express my appreciation to both the distinguished Senator from Connecticut and the chairman of the committee, Senator COLLINS. As I said on Monday, the Senate is well served by having this bipartisan duo that has long practiced good government steering us on this important piece of legislation.

The Senator from Connecticut is absolutely right; the three of us have worked very cooperatively over the last few days. Senator LOTT also has made a valuable contribution, as well as Senator CORNYN, Senator DAYTON, and Senator SNOWE. A bipartisan group of Senators has been concerned about this issue. I believe the legislative counsel's office will have the actual language to bring to the Senate very shortly, probably in 10 or 15 minutes.

With the agreement of the Senator from Connecticut, I will take a few minutes to outline what the distinguished Senator from Maine, the Senator from Connecticut, myself, Senator LOTT, and our group have agreed to.

The ability to stamp a Government document secret is one of the most powerful tools in our Government. The backdrop for this whole debate was best summed up by Governor Kean, who did such a good job in chairing the 9/11 Commission, who said three-quarters of all the documents he saw associated with his work on the 9/11 Commission that were classified should not have been classified. The power to stamp, in effect, Government documents secret is now a power wielded by people in the belly of 18 Federal agencies where they now classify more than 14 million new documents each year. This is a power that costs taxpayers about $6.5 billion a year, and it is a power that is simply out of control.

Senators on both sides of the aisle recognize that the system used to classify information for national security purposes is broken. It has been the premise of our bipartisan group that it is possible to fight terrorism ferociously, aggressively, and at the same time make sure that the public's right to know information the public is entitled to is addressed.

When we look, for example, at the Senate Intelligence Committee—Senator LOTT, Senator SNOWE, Senator BAYH and I serve on that committee—had it not been for the exceptional work of Chairman ROBERTS and Senator ROCKEFELLER, much of what we tried to do with respect to our bipartisan report on prewar intelligence would have simply been censored. It would have all been drowned in a sea of black ink. So what we need to do is bring some common sense to this area which is now a hodgepodge of laws and regulations and directives. We are now in a position to outline the changes we have agreed to in our legislation.

First—most importantly—this legislation establishes an independent body known as the independent national security classification board which would review existing or proposed classification of any document or material. They would, in effect, be part of an effort for the first time to ensure that there would be an independent board to which there can be an appeal of classification decisions. Although right now an executive agency has had an appeals body, it has been off limits to congressional requests. For the first time, there will be an independent board that will look at these classification issues and there will be a right of the Congress to appeal a decision.

The distinguished chair of the committee was not on the floor, but I want to express while she is here my appreciation to her. What this has been all about from the very beginning is not a Democratic or Republican issue.

This has been about righting the imbalance between the executive branch and the legislative branch with respect to classification decisions. That is what we have been able to do. It ensures that any President's prerogatives as Commander in Chief are maintained. That is essential with respect to national security issues.

We will also have a chance to bring some real independence to the process of how Government documents are classified by ensuring that for the first time there is an independent route to have a classification decision reviewed.

That process will come after we have had a top-to-bottom review of the standards and processes used to classify information. The chair of the committee and I have talked about this in the past. What has been striking is we have never even done a review of the processes that are now used to classify

documents. People such as those who run the National Archives have said that has been a factor in our having such a chaotic system.

So for the first time, again, Congress would have input into the scope of the review that would take place with respect to how Government documents are classified as well as the guidelines or standards that would be issued as a result of the review.

The independent national security classification board the amendment establishes would assume the duties of a group now known as the public interest declassification board. The new board would be made up of nine individuals, five of whom are appointed by the President and four of whom are appointed by the Senate and the House leadership. This is an effort to try to maintain a new kind of balance between the legislative branch and the executive branch.

In order to make sure that balance is maintained over time, the new board may recommend changes in the classification of all or portions of documents, but the President does not have to accept them. However, the key feature here is, if the President chooses not to accept a recommendation of the independent national security classification board, the President would have to submit to Congress in writing the justification for a decision not to implement the recommendation.

To reiterate, there would be an independent body to which Congress can appeal national security classification decisions, but at the same time, if the President doesn't see it in the same way the independent board does, the President, as Commander in Chief, still has the power to exercise the constitutional prerogative as the President determines, but for the first time it would have to be done in writing. I do not subscribe to the view that there is an inherent conflict between the executive branch's accountability to Congress and the American people on one hand and the constitutional role of the President as Commander in Chief. We have long needed a balance in this area, a balance between the public's need for sound, clear-eyed analysis, and the executive's desire to protect the Nation's legitimate security interests.

In my view, there is no room in this equation for the use of classification to insulate officials and agencies from politics. That was essentially the motivation that got Senator LOTT and Senator SNOWE and a bipartisan group of us in the first place. We have seen this abused again and again.

Senator Moynihan did exceptional work years ago, documenting how so many documents have been classified largely because they were trying to provide political cover rather than protection for this country's national security. Senator Moynihan was a mentor to me because when I came to the Senate, I said I was interested in making changes.

Senator COLLINS has been very helpful. She has also been helpful on some of the other issues we will take up in the course of this legislation, particularly the data mining area, where she and Senator LIEBERMAN have a great interest as well.

But Senator LOTT, Senator BOB GRAHAM, Senator CORNYN, Senator SNOWE—the group who worked on this issue—are very appreciative of the help we received from the chair and the ranking minority member.

This amendment involves millions of Government documents. It involves more than $6 billion that is spent on the classification system each year.

I think we are starting now to lift this kind of fog of secrecy—changing a classification system that rewards secrecy and discourages openness. We will have the amendment actually before the Senate probably in a few minutes. In the interest of time—I know the hour is late and Senators have amendments—I wanted to speak about this, and I wanted to describe what it was that we have agreed to.

Senator COLLINS's staff and Senator LIEBERMAN's staff have put in a lot of hours with us over the last few days. I am very appreciative and particularly pleased that it would be possible to make these kinds of changes. Senator Moynihan was right years ago when he advocated a process that brought some real independence and a right of appeal to a classification decision. The amendment we will offer tonight does just that.

I see the distinguished chairman of the committee in the Chamber. I yield the floor at this time.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Ms. COLLINS. Mr. President, I express my appreciation to Senator WYDEN. He is always so good to work with on so many issues, and we have enjoyed working on this one as well.

I want to recognize that Senator LOTT was also very involved in the negotiations and working with Senator LIEBERMAN and me to modify this amendment in a way to preserve the goal of the amendment, and yet to address some concerns we had about creating a new board, unnecessary bureaucracy, or some duplication.

As I indicated when Senator WYDEN first offered his amendment, I believe he is addressing a very real problem, and that is improving the way we classify and declassify documents. I know the members of the Intelligence Committee have been very frustrated with the process that they went through in developing a lengthy report, only to have so much of it redacted and to have no good way of appealing those redactions, no good way of challenging what many members of that committee, on both sides of the aisle, viewed as excessive secrecy or excessive classification.

I have been concerned that the original amendment intruded unnecessarily into the President's constitutional prerogative and duplicated some of the provisions in our bill. I believe the changes we have worked out so cooperatively go a very long way toward addressing the concerns we had while advancing the goal.

Rather than creating a new board to review the classification policy, Senator WYDEN's amendment would now ensure that Congress has an opportunity to make comments regarding the Presidential review of classification policies already established under the Collins-Lieberman bill, and even more importantly to the Senator who has said we need an independent place for Congress to go to bring appeals regarding classification decisions, the revised amendment has agreed to build upon a board that already exists, the Public Interest Declassification Board. The amendment would change the name of that board to the Independent National Security Classification Board. This board was established in 2001, but it is still being put into place.

Under the Wyden amendment, it will have specific authority to hear appeals of classification decisions from specified congressional committees. The board would then make a recommendation to the President, which the President could either accept or reject. If the President rejects the board's decision, then the President, as the Senator indicated, would have to send a written justification of that decision to Congress. This framework helped to address some of the concerns we had about the original amendment.

I will note that this is not the administration's favorite amendment, even in the revised form, but I believe we have struck a fair balance and I am prepared to recommend that we accept the amendment once we get it. I understand it is going to be here momentarily. There were a few technical glitches.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. LIEBERMAN. Mr. President, again, I thank Senator WYDEN. It was a pleasure for us and our staffs to work with him and his staff. As I said, this is a substantial accomplishment. I particularly enjoyed the Senator's reference to the late, great Senator Pat Moynihan. I have a vision of Pat in Heaven smiling right now. I can see that smile. He is probably not wearing that hat that we all loved so much at the time.

The important thing here is this is a right of appeal, if you will, regarding the President's power to classify documents. That is a right that will exist in a limited number of Members of Congress, interestingly and importantly, of both parties. The ultimate beneficiaries, of course, are the American people.

Members of Congress have access to matters that are fully classified. So this is really the public's right to know. If these Members of Congress decide that the public has a right to know, ought to have a right to know the content of something that has been classified, they will have the right to

appeal to this board for review. It is a very finely balanced compromise that is substantial, real, and preserves the President's right as Commander in Chief to have the final word. So this was real legislating in the public interest.

I thank the Senator and his cosponsors for the leadership and persistence that brought this matter to the floor and results now in this agreement which I think will receive unanimous consent from the Senate.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. WYDEN. Mr. President, I will be very brief. Again, I express my appreciation to the chair and ranking minority member. The chair made an important point with respect to the executive branch. Clearly, no President, no executive branch is going to ever hold a rally in favor of this kind of idea.

I think the Senator mentioned Senator LOTT. Senator LOTT has been invaluable from the very beginning. He said we just have to build in—whether it is Democrats or Republicans—a new sense of independence. I have tried to say that there is no question in my mind, whether it was a Democratic administration or a Republican administration, what you are talking about are human beings who I think inherently are going to be concerned about something coming out. So out comes the stamp and something is marked ''classified,'' and by the time the rubberstamp program is done, you have millions of documents classified in our country for reasons that have nothing to do with national security.

The Senator from Maine has summed it up very well. I am sure we are going to continue to hear from the administration as this is debated in the Senate and in the House. I do think we have struck a balance that ensures that by giving the President, in effect, the first word on a classification decision, through their appointees having the ability to classify a Government document and, in effect, the last word on a subject, because the independent board makes the recommendation to the President, if the President decides he doesn't want to go along with the independent board, they get the last word by stating in writing why they think the independent board is off base. I think that is the kind of balance between the executive branch and the legislative branch that we ought to have.

What pleases me is tonight this is the end of the line for a classification system that, in effect, encourages secrecy, discourages openness, and I am glad a bipartisan effort could have put all this time into it. I think we will have the amendment over here quickly. With the concurrence of the chair and the ranking minority member, it is not my intent to ask for a recorded vote. I think we can do it on a voice vote.

I yield the floor.

Ms. COLLINS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Ms. COLLINS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

AMENDMENT NO. 3727

Ms. COLLINS. Mr. President, on behalf of Senator CORNYN, I send an amendment to the desk, and I ask unanimous consent that the pending amendment be set aside.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

The Senator from Maine [Ms. COLLINS], for Mr. CORNYN, proposes an amendment numbered 3727.

Ms. COLLINS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: to amend provisions of law originally enacted in the Clinger-Cohen Act to enhance agency planning for information security needs)

At the appropriate place, insert the following:

**SEC. ___. AMENDMENTS TO CLINGER-COHEN PROVISIONS TO ENHANCE AGENCY PLANNING FOR INFORMATION SECURITY NEEDS.**

Chapter 113 of title 40, United States Code, is amended—

(1) in section 11302(b), by inserting ''security,'' after ''use,'';

(2) in section 11302(c), by inserting '', including information security risks,'' after ''risks'' both places it appears;

(3) in section 11312(b)(1), by striking ''information technology investments'' and inserting ''investments in information technology (including information security needs)''; and

(4) in section 11315(b)(2), by inserting '', secure,'' after ''sound''.

Ms. COLLINS. Mr. President, this proposal amends the Cohen-Clinger Act to explicitly require Federal agencies to emphasize information security from the earliest possible stages of a new system's IT capital planning and investment decisionmaking process.

The Office of Management and Budget has instructed agencies through its budget guidance that information security must be a vital part of the capital planning and investment control process. Amending the Cohen-Clinger Act to codify this guidance will ensure that the law reflects a certain threat environment in cyberspace and requires that information security be an integral part of the Federal acquisition process for the long term.

Security should be reinforced as we migrate toward a more interoperable environment. I believe this amendment is helpful. It is my understanding that it has been cleared on both sides.

Mr. LIEBERMAN. Mr. President, this is a good amendment. I thank Senator CORNYN for offering it. I urge its adoption.

The PRESIDING OFFICER. Is there further debate?

If not, the question is on agreeing to amendment No. 3727.

The amendment (No. 3727) was agreed to.

Ms. COLLINS. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Ms. COLLINS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Ms. COLLINS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

AMENDMENT NO. 3763

Ms. COLLINS. Mr. President, on behalf of Senator COLEMAN, 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 Maine [Ms. COLLINS], for Mr. COLEMAN, proposes an amendment numbered 3763.

Ms. COLLINS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: to strike the amendments made by section 202, regarding the National Homeland Security Council)

On page 117, strike line 1 and all that follows through page 118, line 7.

Ms. COLLINS. Mr. President, Senator COLEMAN has offered an amendment that would strike the language in our bill that merges the Homeland Security Council into the National Security Council. I note that the administration yesterday in its Statement of Administration Policy, in which it endorsed passage of our legislation, expressed considerable concern about the provisions that would reorganize the President's internal policy staff by merging the National Security Council and the Homeland Security Council. The administration feels strongly that Congress should not legislate and make permanent the internal organization of the President's own executive offices or otherwise limit the flexibility needed to respond quickly to threats or attacks.

In looking further at this issue, I agree with the concerns raised by the administration. Senator COLEMAN's amendment striking the merger of those two councils within the Executive Office of the President is acceptable to me.

That is what his amendment would accomplish. I believe the amendment has been cleared on both sides and I urge its passage.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I rise to support the amendment. I thank

Senator COLEMAN for submitting it. The Homeland Security Council was, as I recall, created by the President and then made into statute as part of the Homeland Security Act that created the Department of Homeland Security. It was meant to be an advisory board to the Secretary of Homeland Security and also a place to which the Secretary could bring representatives of other departments that might not be in the security community normally, such as the Department of Health and Human Services, in terms of bioterrorism, for instance. So I think it has played an important role.

The 9/11 Commission report very gently recommended that we consider merging the Homeland Security Council into the National Security Council. Senator COLEMAN raises a concern that I think is justified as to, one, whether all of these items ought to be on the agenda of the National Security Council, which is already quite busy; two, that this council has a constructive role to play uniquely for the Department of Homeland Security, and insofar as one of the thoughts behind the Commission's suggestion was that merging the Homeland Security Council into the National Security Council would provide a forum where disputes between departments could be resolved, the President, of course, always reserves the right to call the heads of the relevant departments together to do that.

So the long and the short of it is, I think it is too early to—what was the Mark Twain line? The rumors of my death are premature, or something like that. I think the same could be said of the Homeland Security Council. There is a reason for it to live on. Senator COLEMAN's amendment achieves that, and I support it.

The PRESIDING OFFICER (Mr. ALEXANDER). Is there further debate?

If not, the question is on agreeing to amendment No. 3763.

The amendment (No. 3763) was agreed to.

Ms. COLLINS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Ms. COLLINS. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

AMENDMENT NO. 3704, AS MODIFIED

Ms. COLLINS. Mr. President, on behalf of Senator WYDEN, I send a modification of the Wyden amendment No. 3704 to the desk. I ask unanimous consent that the amendment be so modified.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

The amendment (No. 3704), as modified, is as follows:

On page 134, line 14, insert ''issue guidelines'' before ''on classification''

On page 134, strike lines 16 and 17 and insert the following:

commonly accepted processing and access controls, in the course of which review, the President may consider any comments submitted by the Select Committee on Intelligence, the Committee on Armed Services, the Committee on Foreign Relations of the Senate, and the Permanent Select Committee on Intelligence, the Committee on Armed Services, and the Committee on International Relations of the House of Representatives regarding—

(i) the scope of the review the President should undertake in formulating the guidelines under this subparagraph; and

(ii) the substance of what guidelines should be issued.

On page 177, after line 17, add the following:

**SEC. 226. CONGRESSIONAL APPEALS OF CLASSIFICATION DECISIONS.**

(a) REDESIGNATION OF PUBLIC INTEREST DECLASSIFICATION BOARD AS INDEPENDENT NATIONAL SECURITY CLASSIFICATION BOARD.—(1) Subsection (a) of section 703 of the Public Interest Declassification Act of 2000 (title VII of Public Law 10–567; 50 U.S.C. 435 note) is amended by striking '''Public Interest Declassification Board''' and inserting '''Independent National Security Classification Board'''.

(2) The heading of such section is amended to read as follows:

**''SEC. 703. INDEPENDENT NATIONAL SECURITY CLASSIFICATION BOARD.''.**

(b) REVIEW OF CLASSIFICATION DECISIONS.—(1) IN GENERAL.—The Independent National Security Classification Board shall, pursuant to a request under paragraph (3), review any classification decision made by an executive agency with respect to national security information.

(2) ACCESS.—The Board shall have access to all documents or other materials that are classified on the basis of containing national security information.

(3) REQUESTS FOR REVIEW.—The Board shall review, in a timely manner, the existing or proposed classification of any document or other material the review of which is requested by the chairman or ranking member of—

(A) the Committee on Armed Services, the Committee on Foreign Relations, or the Select Committee on Intelligence of the Senate; or

(B) the Committee on Armed Services, the Committee on International Relations, or the Permanent Select Committee on Intelligence of the House of Representatives.

(4) RECOMMENDATIONS.—

(A) IN GENERAL.—The Board may make recommendations to the President regarding decisions to classify all or portions of documents or other material for national security purposes or to declassify all or portions of documents or other material classified for such purposes.

(B) IMPLEMENTATION.—Upon receiving a recommendation from the Board under subparagraph (A), the President shall either—

(i) accept and implement such recommendation; or

(ii) not later than 60 days after receiving the recommendation if the President does not accept and implement such recommendation, transmit in writing to Congress justification for the President's decision not to implement such recommendation.

(5) REGULATIONS.—The Board shall prescribe regulations to carry out this subsection.

(6) EXECUTIVE AGENCY DEFINED.—In this section, the term ''Executive agency'' has the meaning given that term in section 105 of title 5, United States Code.

Ms. COLLINS. Mr. President, this modification was debated earlier this evening. There is no further debate on the amendment as modified.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified.

The amendment (No. 3704), as modified, was agreed to.

Ms. COLLINS. I move to reconsider the amendment and I move to lay it on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, in consultation with the managers of the bill, it is the desire of the majority leader and Democratic leader to keep moving tonight. I will send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the pending amendment is laid aside.

AMENDMENT NO. 3781

Mr. WARNER. Mr. President, in the study of the 9/11 report, frequent reference is made to the Goldwater-Nichols Act. It is a piece of legislation in which, as a member of the Armed Services Committee, I had a great deal of participation, working on this particular statute. It was an attempt, and a successful attempt, to rewrite the defense-related laws, and describes certain changes which would make the Department and particularly the Joint Chiefs of Staff a more effective body.

I want to refer to one provision.

I ask unanimous consent that certain portions of the statute be printed in the RECORD following my remarks.

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

(See exhibit 1).

Mr. WARNER. Mr. President, that provision reads as follows:

Advice and Opinions of Members Other Than Chairman . . . A member of the Joint Chiefs—

That could be the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, the Commandant of the Marine Corps.

I repeat:

A member of the Joint Chiefs of Staff—other than the Chairman—may submit to the Chairman advice or an opinion in disagreement with, or advice or an opinion in addition to, the advice presented by the Chairman to the President—

That is the President of the United States—

—the National Security Council, or the Secretary of Defense. If a member submits such advice or opinion, the Chairman shall present the advice or opinion of such member at the same time he presents his own advice to the President, the National Security Council, or the Secretary of Defense, as the case may be.

We learned that in the course of the past 18 months or maybe longer—I will not try to define the exact period of time—when our President was making

decisions in connection with certain advice he was receiving from the intelligence community—I will just touch on this lightly, and perhaps others will want to address this with more specificity—certain caveats, being other opinions—the opinions, say, of the Director of Central Intelligence—were not brought with sufficient force and effect to the attention of the policymakers.

The purpose of my amendment is to enable a framework by which, following the precedents of the Goldwater-Nichols Act, certain individuals in the contemplated new legislative framework as described by the distinguished chairman and members of the Governmental Operations Committee, other opinions will be brought to the attention of the President at such time as the NID is briefing the President.

I will refer with specificity to the amendment I have sent to the desk at this time. The first paragraph is technical, so I will omit that. I will go right to the operative paragraph:

Advice and opinions of Members other than Chairman. ''Members'' refers to the Joint Intelligence Community Council which is established, it is my understanding, by the chairman's statute.

A member of the Joint Intelligence Community Council (other than the Chairman) may submit to the chairman advice or an opinion in disagreement with, or advice or an opinion in addition to, the advice presented by the National Intelligence Director to the President or the National Security Council, in the role of the Chairman as Chairman of the Joint Intelligence Community Council. If a member submits such advice or opinion, the Chairman shall present the advice or opinion of such member at the same time the Chairman presents the advice of the Chairman to the President or the National Security Council, as the case may be.

The Chairman shall establish procedures to ensure that the presentation of the advice of the Chairman to the President or the National Security Council [or the Secretary of Defense] is not unduly delayed by reason of the submission of the individual advice or opinion of another member of the council.

Lastly, ''Recommendations to Congress:

Any member of the Joint Intelligence Community Council may make such recommendations to Congress.

I presume that would be interpreted as the leadership of both Houses and the chairmen and ranking members of the relevant committees.

The reason I have not been more specific here is that we are awaiting the decisions of the group on which I am privileged to serve headed by the distinguished whip, Mr. MCCONNELL, and on other side the distinguished whip, the Senator from Nevada, Mr. REID.

In other words, as we look at the revisions that will be proposed in connection with the oversight responsibilities of the Congress, that may require some refinement.

I will reread it:

Any member of the Joint Intelligence Community Council may make such recommendations to Congress relating to the intelligence committee as such member considers appropriate.

I think that is the insurance that is quite visible to put in place such that other opinions can be considered by the President of the United States.

Throughout, the 9/11 report referred to: We have to have imagination. We often use the phrase ''be competitive'' with opinions within the structure of the intelligence committee. I believe that is all good. I really do. And the purpose of this amendment is to ensure that there is in law a procedure that these important members of this council will have the opportunity to see that their views are presented contemporaneous—at the same time the President receives the views of the NID. That is the purpose of the amendment.

I understand tonight it will be pending, and at such time as the distinguished chairman of the committee wishes to come over and review the subject with others, I would be happy to do so.

EXHIBIT I

(d) ADVICE AND OPINIONS OF MEMBERS OTHER THAN CHAIRMAN.—(1) A member of the Joint Chief of Staff (other than the Chairman) may submit to the Chairman advice or an opinion in disagreement with, or advice or an opinion in addition to, the advice presented by the Chairman to the President, the National Security Council, or the Secretary of Defense. If a member submits such advice or opinion, the Chairman shall present the advice or opinion of such member at the same time he presents his own advice to the President, the National Security Council, or the Secretary of Defense, as the case may be.

(2) The Chairman shall establish procedures to ensure that the presentation of his own advice to the President, the National Security Council, or the Secretary of Defense is not unduly delayed by reason of the submission of the individual advice or opinion of another member of the Joint Chiefs of Staff.

(e) ADVICE ON REQUEST.—The members of the Joint Chiefs of Staff, individually or collectively, in their capacity as military advisers, shall provide advice to the President, the National Security Council, or the Secretary of Defense on a particular matter when the President, the National Security Council, or the Secretary requests such advice.

(f) RECOMMENDATIONS TO CONGRESS.—After first informing the Secretary of Defense, a member of the Joint Chiefs of Staff may make such recommendations to Congress relating to the Department of Defense as he considers appropriate.

Ms. COLLINS. Mr. President, I thank the distinguished chairman of the Senate Armed Services Committee for coming forward this evening and laying down this amendment. He has explained very clearly the purpose. I very much appreciate that explanation.

As the Senator is aware, the ranking member of the committee had a commitment for this evening. I would like to hold the amendment over until tomorrow morning. But I am very grateful to the Senator for laying down the amendment this evening so that we can continue to make progress on this bill. As always, he has given his proposal a great deal of thought. I appreciate the parallels that he is drawing to the provisions of the Goldwater-Nickles Act and the fact that the members of Joint Chiefs are allowed to present their views independently to Congress and to the President. I very much appreciate his laying down the amendment tonight. I look forward to having further consideration in the morning.

Mr. WARNER. Mr. President, I thank the distinguished chairman for her views.

I ask unanimous consent that Senator STEVENS be listed as a cosponsor of the amendment. There may be others in due course that would like to do so.

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

Mr. WARNER. Mr. President, I am privileged to offer one of the first amendments. I have other amendments of which I think the chairman is aware. We are going to comply with her request and the leadership to have the text before them within the amendments that are established. I want to be very constructive as a working partner as we move forward with this important piece of legislation.

Ms. COLLINS. Mr. President, the distinguished chairman of the Senate Armed Services Committee is always constructive in every way. I very much appreciate the thought and the knowledge he has and the depth with which he explores important issues.

Mr. WARNER. Mr. President, on that note, I best yield the floor.

AMENDMENT NO. 3781

Mr. WARNER. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER], for himself and Mr. STEVENS, proposes an amendment numbered 3781.

Mr. WARNER. Mr. President, I ask unanimous consent that 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 requirements and authorities of the Joint Intelligence Community Council)

On page 119, beginning on line 17, strike ''upon the request of the National Intelligence Director.'.'' and insert ''at least monthly and otherwise upon the request of the National Intelligence Director or another principal member of the Council.

''(e) ADVICE AND OPINIONS OF MEMBERS OTHER THAN CHAIRMAN.—(1) A member of the Joint Intelligence Community Council (other than the Chairman) may submit to the Chairman advice or an opinion in disagreement with, or advice or an opinion in addition to, the advice presented by the National Intelligence Director to the President or the National Security Council, in the role of the Chairman as Chairman of the Joint Intelligence Community Council. If a member submits such advice or opinion, the Chairman shall present the advice or opinion of such member at the same time the Chairman presents the advice of the Chairman to the President or the National Security Council, as the case may be.

''(2) The Chairman shall establish procedures to ensure that the presentation of the

advice of the Chairman to the President or the National Security Council is not unduly delayed by reason of the submission of the individual advice or opinion of another member of the Council.

''(f) RECOMMENDATIONS TO CONGRESS.—Any member of the Joint Intelligence Community Council may make such recommendations to Congress relating to the intelligence community as such member considers appropriate.''.

Ms. COLLINS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Ms. COLLINS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. COLEMAN). Without objection, it is so ordered.

## MORNING BUSINESS

Ms. COLLINS. Mr. President, I ask unanimous consent that there now be a period of morning business, with Senators able to speak for up to 10 minutes each.

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

## TRIBUTE TO IRVING B. HARRIS

Mr. DURBIN. Mr. President, last Saturday, on September 25, the city of Chicago, the State of Illinois, and our Nation, lost a great man. Irving Harris died at the age of 94 in the city of Chicago. He was my friend and my inspiration.

I have been called on many times to give commencement speeches at colleges and universities, medical schools and law schools. When I speak to the young students about what they can make of their lives, I never fail to tell them the story of Irving Harris and his life. It is a great story, and one that I would like to share with my colleagues in the Senate.

Irving Harris was born and raised in Saint Paul, MN. He and his two brothers were raised by a father, who was a merchant, and a mother who inspired him and his two brothers, in their words, ''to always be No. 1 in your class.'' They listened carefully to their parents and they succeeded in almost unimaginable ways.

The two Harris brothers, Neison and Irving, joined a friend and started a company in 1946, the Toni Home Permanent Company. Within 2 years, Tony home permanents had become so popular across the United States that they sold this company to Gillette for $20 million. The year was 1948; $20 million was a huge sum of money.

If you followed his business career, Irving Harris went on to do many things—to be the director of a mutual fund, to start another company in North Brook, IL, the Pittway Corporation, which he ultimately sold for some $2 billion. Just those facts and those stories alone tell you of the business success of Irving Harris. But if you were to stop with those stories, you would not understand his greatness, nor would you understand the real measure of this man.

Unlike some people who were given great gifts of wealth and skill and then used them to make their own lives more comfortable, Irving Harris saw life much differently. He was a man who was constantly looking for ways to help others, particularly ways to help children. And for over 60 years, he took his wealth and his business success and devoted it to helping other people in so many different ways.

He helped create the Yale Child Study Center at Yale University to honor his alma mater but also to try to find ways to help children born in poverty have a full and successful life.

He provided the funds that launched the center for the University of Chicago's Graduate School of Public Policy Studies, which bears his name, and the Erikson Institute for Advanced Studies in Child Development.

Irving Harris believed that children, if given the right nurturing experience and the right chance, could succeed. A lot of people believe that. But he invested his money in that belief.

He started the Ounce of Prevention Fund in the city of Chicago in the State of Illinois to prove that point again. He was one of the early people pushing for Head Start.

Let me read to you what Irving Harris said in one of his books. The book is entitled, ''Children in Jeopardy: Can We Break the Cycle of Poverty?'' Irving Harris wrote in 1996, ''I believe that God's gift of brain potential is not discriminatory.

''Kindergarten is much too late to worry if a child is ready to learn. We must begin in the first days and weeks and months of life to get children ready to learn.''

That was his passion and that was his belief. That fueled his life and his interest.

The many times that we would sit down and talk about policies, he would come back to these points about how many wasted lives of children there are in America because we didn't start soon enough and we didn't do well enough and we didn't understand the complexity of the challenges facing these children.

So this man so successful in business focused so much of his life and time on children and helping them in so many different ways.

He was certainly good at business—one of the best. But he took that success and he took that money and tried to improve the lives of others.

His philanthropy didn't end there. There is hardly a place you can turn in Chicago without seeing Irving Harris's name or the name of his wife Joan. They left their mark in our city as they left it in our Nation.

Joan, Irving Harris's wife of 30 years, whom I met just the other day, recounted her frustration when she was trying to build a new theater in downtown Chicago for music and dance to make it part of Mayor Daley's hugely successful Millennium Park. She turned to Irving one day and said: I just think we are going to have to give up. I don't think I can come up with money to build the theater.

I will not quote him exactly, but Irving basically said: I feel like that myself, and I don't think I am ever going to get the promised land. We are going to do it.

He told Joan they were going to do it, and they did. They made a massive investment in that theater—some $39 million of the $52 million price tag to build that theater. That theater is going to endure in his name and in the name of Joan Harris. It is going to entertain, and it is going to remind a lot of people of the good in culture, in music, in art that really lifts us all.

They did the same thing, incidentally, in Aspen, CO. If you go to Aspen, CO, where they used to spend some time, they decided they needed a special place—an outdoor gathering place for music festivals—you will find that Harris music gathering place, the Harris Music Center, just another part of his legacy.

The University of Chicago President, Don Michael Randel, called Mr. Harris ''one of those extraordinary and too-rare individuals whose passion and humanity made a real difference in the lives of others.''

Mr. Randel said:

> Because of his foresight and his generosity, countless disadvantaged children have been able to fulfill their potential and to become productive citizens. And many of the most fundamental social problems suffered by children and families now have some hope of resolution thanks to the research he has so generously supported.

In addition to his wife Joan, Irving Harris is survived by his daughters, Virginia Polsky and Roxanne Frank; a son Bill, who is a close friend as well, a person who has devoted his life to many important causes such as the global AIDS epidemic and children's causes; a stepdaughter, Louise Frank; stepsons, Daniel and Jonathan Frank; a sister, June Barrows; 10 grandchildren and 26 great-grandchildren.

His legacy goes beyond his family. His legacy will be realized by others for generations to come. Irving Harris's life will not be measured in the number of dollars he earned but the number of lives that he touched, not in the assets he accumulated but in the fact that he was such an asset to Chicago and to America. The pillars of American business know of his success, but Irving Harris was a pillar of strength and hope for the poor, and in that effort he made his life a model for us all.

It is my good fortune in this business to meet many people and to meet many wonderful people. I count on one hand the most amazing people I have ever met, and Irving Harris will be in that number.

I will miss Irving Harris, but I am grateful to have known him and to be

inspired by his lifetime of caring and hope.

## OFFICE OF COMPLIANCE NOTICE

Mr. STEVENS. Mr. President, I ask unanimous consent that the attached statement from the Office of Compliance be printed in the RECORD today pursuant to section 304(b)(1) of the Congressional Accountability Act of 1995 (2 U.S.C. 1384(b)(1)).

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

FROM THE BOARD OF DIRECTORS OF THE OFFICE OF COMPLIANCE

Implementing Certain Substantive Rights and Protections of the Fair Labor Standards Act of 1938, as Required by Section 203 of the Congressional Accountability Act of 1995 (CAA), 2 U.S.C. 1313.

NOTICE OF PROPOSED RULEMAKING

Background: The purpose of this Notice is to initiate the process for replacing existing overtime pay eligibility regulations with new regulations which will substantially mirror the new overtime exemption regulations recently promulgated by the Secretary of Labor.

Do FLSA overtime pay requirements apply via the CAA to Legislative Branch employing offices? Yes. One of the regulatory statutes incorporated in part through the Congressional Accountability Act of 1995 (CAA), 2 U.S.C. 1301 et seq., is the Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. 201 et seq. Section 203(a)(1) of the CAA states: ''[t]he rights and protections established by subsections (a)(1) and (d) of section 6, section 7, and section 12(c) of the [FLSA] . . . (29 U.S.C. 206(a)(1), 207, 212(c)) shall apply to covered employees.'' Section 7 of the FLSA, 29 U.S.C. 207, includes the requirements regarding the payment of time and one half overtime pay to employees.

Are there existing overtime exemption regulations already in force under the CAA? Yes. In 1996, the Board of Directors of the Office of Compliance promulgated the existing CAA overtime exemption regulations based on the ''old'' 29 CFR Part 541 regulations which were in force until August 23, 2004. These regulations were adopted pursuant to the CAA section 304 procedure outlined herein below. Those regulations are found at Parts H541 (applicable to the House of Representatives), S541 (applicable to the Senate), and C541 (applicable to the other employing offices covered by section 203 of the CAA) of the FLSA Regulations of the Office of Compliance. These regulations remain in force until replaced by new regulations. Office of Compliance regulations can be accessed via our web site: www.compliance.gov.

Why is this Notice being issued? This Notice of Proposed Rulemaking is occasioned by the recent promulgation of new overtime exemption regulations by the Secretary of Labor at Vol. 69 of the Federal Register, No. 79, at pp. 22122 et seq., on August 23, 2004. The new regulations of the Secretary of Labor are set out at 29 U.S.C. Part 541, and replace the regulations which had been in effect prior to August 23, 2004. The Secretary of Labor's regulations do not apply to employing offices and employees covered by the CAA.

Why are there separate sets of existing FLSA regulations for the House of Representatives, the Senate, and the other employing offices covered by the CAA? Section 304(a)(2)(B) of the CAA, 2 U.S.C. 1384(a)(2)(B), requires that the substantive rules of the Board of Directors of the Office of Compliance ''shall consist of 3 separate bodies of regulations, which shall apply, respectively, to—(i) the Senate and employees of the Senate; (ii) the House of Representatives and employees of the House of Representatives; and (iii) the other covered employees and employing offices.'' In 1996, the House of Representatives (H. Res. 400) and the Senate (S. Res. 242) each adopted by resolution the FLSA regulations applicable to each body. The Senate and House of Representatives adopted by concurrent resolution (S. Con. Res. 51) the regulations applicable to other employing offices and employees.

Are there substantive differences in the proposed regulations for the House of Representatives, the Senate, and the other employing offices? No. While there are some differences in other parts of the existing FLSA regulations applicable to the Senate, the House of Representatives, and the other employing offices (chiefly related to the mandate at section 203(c)(3) of the CAA, 2 U.S.C. 1313(c)(3), regarding ''covered employees whose work schedules directly depend on the schedule of the House of Representatives or the Senate . . .''), the Board of Directors has identified no ''good cause'' for varying the text of these regulations. Therefore, if the proposed part 541 regulations are adopted, the prefixes ''H'', ''S'', and ''C'' will be affixed to each of the sets of regulations for the House, for the Senate, and for the other employing offices, but the text of the part 541 regulations will be identical.

How are substantive regulations proposed and approved under the CAA? Section 203(c)(2) of the CAA, 2 U.S.C. 1313(c)(2), requires that the Board of Directors propose substantive regulations implementing the FLSA overtime requirements which are ''the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions . . . except insofar as the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulation would be more effective for the implementation of the rights and protections under this section.'' Pursuant to section 304 of the CAA, 2 U.S.C. 1384, the procedure for promulgating such substantive regulations requires that: (1) the Board of Directors adopt proposed substantive regulations and publish a general notice of proposed rulemaking in the Congressional Record; (2) there be a comment period of at least 30 days after the date of publication of the general notice of proposed rulemaking; (3) after consideration of comments by the Board of Directors, that the Board adopt regulations and transmit notice of such action together with the regulations and a recommendation regarding the method for Congressional approval of the regulations to the Speaker of the House and President pro tempore of the Senate for publication in the Congressional Record; (4) committee referral and action on the proposed regulations by resolution in each House, concurrent resolution, or by joint resolution; and (5) final publication of the approved regulations in the Congressional Record, with an effective date prescribed in the final publication. For more detail, please reference the text of 2 U.S.C. 1384. This Notice of Proposed Rulemaking is step (1) of the outline set forth above.

How does the Board of Directors recommend that Congress approve these proposed regulations? Pursuant to section 304(b)(4) of the CAA, 2 U.S.C. 1384(b)(4), the Board of Directors is required to ''include a recommendation in the general notice of proposed rulemaking and in the regulations as to whether the regulations should be approved by resolution of the Senate, by resolution of the House of Representatives, by concurrent resolution, or by joint resolution.'' The Board of Directors recommends that the procedure used in 1996 be used to adopt these proposed overtime exemption regulations: the House of Representatives adopted the ''H'' version of the regulations by resolution; the Senate adopted the ''S'' version of the regulations by resolution; and the House and Senate adopted the ''C'' version of the regulations applied to the other employing offices by a concurrent resolution.

Are these proposed regulations also recommended by the Office of Compliance's Executive Director, the Deputy Executive Director for the House of Representatives, and the Deputy Executive Director for the Senate? Yes, as required by section 304(b)(1) of the CAA, 2 U.S.C. 1384(b)(1), the substance of these regulations is also recommended by the Executive Director and Deputy Executive Directors of the Office of Compliance.

How are the Secretary of Labor's new overtime exemption regulations different than the old Secretary of Labor regulations at 29 CFR Part 541? The Secretary of Labor has substantially rewritten Part 541. Much of the regulatory framework for determining whether a particular employee should or should not receive overtime pay at time and one-half of that employees's regular rate of pay has been restructured under the new Part 541. For the Secretary of Labor's explanation of the substance of the changes, see the Department of Labor's discussion of the new regulations found at: www.dol.gov/fairpay/.

How similar are the proposed CAA regulations with the new Secretary of Labor regulations? Except for certain required changes, which are shown in the accompanying proposed regulations, the Board of Directors has repeated the text of the regulations at 29 CFR Part 541. ''Good cause'' for modification of the existing regulations of the Secretary of Labor, as required by section 203(c)(2) of the CAA, 2 U.S.C. 1313(c)(2), consists of those changes needed to reflect the authority of the CAA as the enabling statute for these regulations, the requirement at section 225(d)(3) of the CAA, 2 U.S.C. 1361(d)(3), that the CAA ''shall not be construed to authorize enforcement by the executive branch of this Act. . . .''. If there is any additional good cause for a particular proposed variation from the Secretary of Labor's regulations, it is set out adjacent to that provision of the proposed regulation.

Are these proposed CAA regulations available to persons with disabilities in an alternate format? This Notice of Adoption of Amendments to the Procedural Rules is available on the Office of Compliance web site, www.compliance.gov which is compliant with section 508 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. 794d. This Notice can also be made available in large print or Braille. Requests for this Notice in an alternative format should be made to: Alma Candelaria, Deputy Executive Director, Office of Compliance, 110 2nd Street, S.E., Room LA–200, Washington, D.C. 20540; 202–724–9225; TDD: 202–426–1912; FAX: 202–426–1913.

30-DAY COMMENT PERIOD REGARDING THE PROPOSED REGULATIONS

How can I submit comments regarding the proposed regulations? Comments regarding the proposed new overtime exemption regulations of the Office of Compliance set forth in this NOTICE are invited for a period of thirty (30) days following the date of the appearance of this NOTICE in the Congressional Record. In addition to being posted on the Office of Compliance's section 508 compliant web site (www.compliance.go) this

NOTICE is also available in the following alternative formats: Large Print, Braille. Requests for this NOTICE in an alternative format should be made to: Bill Thompson, Executive Director, or Alma Candelaria, Deputy Executive Director, Office of Compliance, at 202–724–9250 (voice) or 202–426–1912 (TDD).

Submission of comments must be made in writing to the Executive Director, Office of Compliance, 110 Second Street, S.E., Room LA–200, Washington, D.C. 20540–1999. It is requested, but not required, that an electronic version of any comments be provided on an accompanying computer disk. Comments may also be submitted by facsimile to the Executive Director at 202–426–1913 (a non-toll-free number.) Those wishing to receive confirmation of the receipt of their comments must provide a self-addressed, stamped post card with their submission.

Copies of submitted comments will be available for review on the Office's web site at www.compliance.gov, and at the Office of Compliance, 110 Second Street, S.E., Washington, D.C. 20540–1999, on Monday through Friday (non-Federal holidays) between the hours of 9:30 a.m. and 4:30 p.m.

Supplementary Information: The Congressional Accountability Act of 1995 (CAA), PL 104–1, was enacted into law on January 23, 1995. The CAA applies the rights and protections of 12 federal labor and employment statutes to covered employees and employing offices within the Legislative Branch of Government. Section 301 of the CAA (2 U.S.C. 1381) establishes the Office of Compliance as an independent office within the Legislative Branch.

HOW TO READ THE PROPOSED AMENDMENTS

The text of the proposed amendments reproduces the text of the regulations promulgated on August 23, 2004 by the Secretary of Labor at 29 CFR Part 541, and shows changes proposed for the CAA version of these same regulations. Changes proposed by the Board of Directors of the Office of Compliance are shown as follows: *[[deletions within italicized brackets]]*, ***and added text in italicized bold***. Therefore, if these regulations are approved as proposed, *[[bracketed text will disappear from the regulations]]*, ***and added text will remain***. If these regulations are approved for the House of Representatives by resolution of the House, they will be promulgated with the prefix ''H'' appearing before each regulations section number. If these regulations are approved for the Senate by resolution of the Senate, they will be promulgated with the prefix ''S'' appearing before each regulations section number. If these regulations are approved for the other employing offices by joint or concurrent resolution of the House of Representatives and the Senate, they will be promulgated with the prefix ''C'' appearing before each regulations section number.

PROPOSED OVERTIME EXEMPTION REGULATIONS

PART 541—DEFINING AND DELIMITING THE EXEMPTIONS FOR EXECUTIVE, ADMINISTRATIVE, PROFESSIONAL, COMPUTER AND OUTSIDE SALES EMPLOYEES

Subpart A—General Regulations

Sec.



Authority: 29 U.S.C. 213; *[[*Public Law 101–583, 104 Stat. 2871*]]*; ***2 U.S.C. 203; 2 U.S.C. 304.*** *[[*Reorganization Plan No. 6 of 1950 (3 CFR 1945–53 Comp. p. 1004); Secretary's Order No. 4–2001 (66 FR 29656).*]]*

Subpart A—General Regulations

Sec. 541.0 Introductory statement. (a) Section 13(a)(1) of the Fair Labor Standards Act (Act), as amended, ***and as applied pursuant to section 203 of the Congressional Accountability Act of 1995, 2 U.S.C. 1313,*** provides an exemption from the Act's minimum wage and overtime requirements for any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of an outside sales employee, *[[*as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act.*]]* Section 13(a)(17) of the Act provides an exemption from the minimum wage and overtime requirements for computer systems analysts, computer programmers, software engineers, and other similarly skilled computer employees. (b) The requirements for these exemptions are contained in this part as follows: executive employees, subpart B; administrative employees, subpart C; professional employees, subpart D; computer employees, subpart E; outside sales employees, subpart F. Subpart G contains regulations regarding salary requirements applicable to most of the exemptions, including salary levels and the salary basis test. Subpart G also contains a provision for exempting certain highly compensated employees. Subpart H contains definitions and other miscellaneous provisions applicable to all or several of the exemptions. (c) Effective July 1, 1972, the Fair Labor Standards Act was amended to include within the protection of the equal pay provisions those employees exempt from the minimum wage and overtime pay provisions as bona fide executive, administrative, and professional employees (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of an outside sales employee under section 13(a)(1) of the Act. The equal pay provisions in section 6(d) of the Fair Labor Standards Act are also administered and enforced by the *[[*United States Equal Employment Opportunity Commission*]]* ***Office of Compliance.***

Sec. 541.1 Terms used in regulations. Act means the Fair Labor Standards Act of 1938, as amended. *[[*Administrator means the Administrator of the Wage and Hour Division, United States Department of Labor. The Secretary of Labor has delegated to the Administrator the functions vested in the Secretary under sections 13(a)(1) and 13(a)(17) of the Fair Labor Standards Act.*]]* ***CAA means Congressional Accountability Act of 1995, as amended. Office means the Office of Compliance. Employee means a "covered employee" as defined in section 101(3) through (8) of the CAA, 2 U.S.C. 1301(3) through (8), but not an "intern" as defined in section 203(a)(2) of the CAA, 2 U.S.C. 1313(a)(2). Employer, company, business, or enterprise each mean an "employing office" as defined in section 101(9) of the CAA, 2 U.S.C. 1301(9).***

Sec. 541.2 Job titles insufficient. A job title alone is insufficient to establish the exempt status of an employee. The exempt or nonexempt status of any particular employee must be determined on the basis of whether the employee's salary and duties meet the requirements of the regulations in this part.

Sec. 541.3 Scope of the section 13(a)(1) exemptions.

(a) The section 13(a)(1) exemptions and the regulations in this part do not apply to manual laborers or other ''blue collar'' workers who perform work involving repetitive operations with their hands, physical skill and energy. Such nonexempt ''blue collar'' employees gain the skills and knowledge required for performance of their routine manual and physical work through apprenticeships and on-the-job training, not through the prolonged course of specialized intellectual instruction required for exempt learned professional employees such as medical doctors, architects and archeologists. Thus, for example, non-management production-line employees and non-management employees in maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers and laborers are entitled to minimum wage and overtime premium pay under the Fair Labor Standards Act, and are not exempt under the regulations in this part no matter how highly paid they might be.

(b)(1) The section 13(a)(1) exemptions and the regulations in this part also do not apply

to police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, park rangers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers and similar employees, regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work.

(2) Such employees do not qualify as exempt executive employees because their primary duty is not management of the enterprise in which the employee is employed or a customarily recognized department or subdivision thereof as required under Sec. 541.100. Thus, for example, a police officer or fire fighter whose primary duty is to investigate crimes or fight fires is not exempt under section 13(a)(1) of the Act merely because the police officer or fire fighter also directs the work of other employees in the conduct of an investigation or fighting a fire.

(3) Such employees do not qualify as exempt administrative employees because their primary duty is not the performance of work directly related to the management or general business operations of the employer or the employer's customers as required under Sec. 541.200.

(4) Such employees do not qualify as exempt professionals because their primary duty is not the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction or the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor as required under Sec. 541.300. Although some police officers, fire fighters, paramedics, emergency medical technicians and similar employees have college degrees, a specialized academic degree is not a standard prerequisite for employment in such occupations.

Sec. 541.4 Other laws and collective bargaining agreements. The Fair Labor Standards Act provides minimum standards that may be exceeded, but cannot be waived or reduced. Employers must comply, for example, with any Federal, State or municipal laws, regulations or ordinances establishing a higher minimum wage or lower maximum workweek than those established under the Act. Similarly, employers, on their own initiative or under a collective bargaining agreement with a labor union, are not precluded by the Act from providing a wage higher than the statutory minimum, a shorter workweek than the statutory maximum, or a higher overtime premium (double time, for example) than provided by the Act. While collective bargaining agreements cannot waive or reduce the Act's protections, nothing in the Act or the regulations in this part relieves employers from their contractual obligations under collective bargaining agreements.

SUBPART B—EXECUTIVE EMPLOYEES

Sec. 541.100 General rule for executive employees.

(a) The term ''employee employed in a bona fide executive capacity'' in section 13(a)(1) of the Act shall mean any employee: (1) Compensated on a salary basis at a rate of not less than $455 per week (or $380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities; (2) Whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof; (3) Who customarily and regularly directs the work of two or more other employees; and (4) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight.

(b) The phrase ''salary basis'' is defined at Sec. 541.602; ''board, lodging or other facilities'' is defined at Sec. 541.606; ''primary duty'' is defined at Sec. 541.700; and ''customarily and regularly'' is defined at Sec. 541.701.

Sec. 541.101 Business owner. The term ''employee employed in a bona fide executive capacity'' in section 13(a)(1) of the Act also includes any employee who owns at least a bona fide 20-percent percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management. The term ''management'' is defined in Sec. 541.102. The requirements of Subpart G (salary requirements) of this part do not apply to the business owners described in this section.

Sec. 541.102 Management. Generally, ''management'' includes, but is not limited to, activities such as interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; maintaining production or sales records for use in supervision or control; appraising employees' productivity and efficiency for the purpose of recommending promotions or other changes in status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning the work among the employees; determining the type of materials, supplies, machinery, equipment or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety and security of the employees or the property; planning and controlling the budget; and monitoring or implementing legal compliance measures.

Sec. 541.103 Department or subdivision. (a) The phrase ''a customarily recognized department or subdivision'' is intended to distinguish between a mere collection of employees assigned from time to time to a specific job or series of jobs and a unit with permanent status and function. A customarily recognized department or subdivision must have a permanent status and a continuing function. For example, a large employer's human resources department might have subdivisions for labor relations, pensions and other benefits, equal employment opportunity, and personnel management, each of which has a permanent status and function. (b) When an enterprise has more than one establishment, the employee in charge of each establishment may be considered in charge of a recognized subdivision of the enterprise. (c) A recognized department or subdivision need not be physically within the employer's establishment and may move from place to place. The mere fact that the employee works in more than one location does not invalidate the exemption if other factors show that the employee is actually in charge of a recognized unit with a continuing function in the organization. (d) Continuity of the same subordinate personnel is not essential to the existence of a recognized unit with a continuing function. An otherwise exempt employee will not lose the exemption merely because the employee draws and supervises workers from a pool or supervises a team of workers drawn from other recognized units, if other factors are present that indicate that the employee is in charge of a recognized unit with a continuing function.

Sec. 541.104 Two or more other employees. (a) To qualify as an exempt executive under Sec. 541.100, the employee must customarily and regularly direct the work of two or more other employees. The phrase ''two or more other employees'' means two full-time employees or their equivalent. One full-time and two half-time employees, for example, are equivalent to two full-time employees. Four half-time employees are also equivalent. (b) The supervision can be distributed among two, three or more employees, but each such employee must customarily and regularly direct the work of two or more other full-time employees or the equivalent. Thus, for example, a department with five full-time nonexempt workers may have up to two exempt supervisors if each such supervisor customarily and regularly directs the work of two of those workers. (c) An employee who merely assists the manager of a particular department and supervises two or more employees only in the actual manager's absence does not meet this requirement. (d) Hours worked by an employee cannot be credited more than once for different executives. Thus, a shared responsibility for the supervision of the same two employees in the same department does not satisfy this requirement. However, a full-time employee who works four hours for one supervisor and four hours for a different supervisor, for example, can be credited as a half-time employee for both supervisors.

Sec. 541.105 Particular weight. To determine whether an employee's suggestions and recommendations are given ''particular weight,'' factors to be considered include, but are not limited to, whether it is part of the employee's job duties to make such suggestions and recommendations; the frequency with which such suggestions and recommendations are made or requested; and the frequency with which the employee's suggestions and recommendations are relied upon. Generally, an executive's suggestions and recommendations must pertain to employees whom the executive customarily and regularly directs. It does not include an occasional suggestion with regard to the change in status of a co-worker. An employee's suggestions and recommendations may still be deemed to have ''particular weight'' even if a higher level manager's recommendation has more importance and even if the employee does not have authority to make the ultimate decision as to the employee's change in status.

Sec. 541.106 Concurrent duties.

(a) Concurrent performance of exempt and nonexempt work does not disqualify an employee from the executive exemption if the requirements of Sec. 541.100 are otherwise met. Whether an employee meets the requirements of Sec. 541.100 when the employee performs concurrent duties is determined on a case-by-case basis and based on the factors set forth in Sec. 541.700. Generally, exempt executives make the decision regarding when to perform nonexempt duties and remain responsible for the success or failure of business operations under their management while performing the nonexempt work. In contrast, the nonexempt employee generally is directed by a supervisor to perform the exempt work or performs the exempt work for defined time periods. An employee whose primary duty is ordinary production work or routine, recurrent or repetitive tasks cannot qualify for exemption as an executive.

(b) For example, an assistant manager in a retail establishment may perform work such as serving customers, cooking food, stocking shelves and cleaning the establishment, but performance of such nonexempt work does not preclude the exemption if the assistant manager's primary duty is management. An assistant manager can supervise employees and serve customers at the same time without losing the exemption. An exempt employee can also simultaneously direct the work of other employees and stock shelves.

(c) In contrast, a relief supervisor or working supervisor whose primary duty is performing nonexempt work on the production line in a manufacturing plant does not become exempt merely because the nonexempt production line employee occasionally has some responsibility for directing the work of other nonexempt production line employees when, for example, the exempt supervisor is unavailable. Similarly, an employee whose primary duty is to work as an electrician is not an exempt executive even if the employee also directs the work of other employees on the job site, orders parts and materials for the job, and handles requests from the prime contractor.

Subpart C—Administrative Employees

Sec. 541.200 General rule for administrative employees.

(a) The term ''employee employed in a bona fide administrative capacity'' in section 13(a)(1) of the Act shall mean any employee: (1) Compensated on a salary or fee basis at a rate of not less than $455 per week (or $380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities; (2) Whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and (3) Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

(b) The term ''salary basis'' is defined at Sec. 541.602; ''fee basis'' is defined at Sec. 541.605; ''board, lodging or other facilities'' is defined at Sec. 541.606; and ''primary duty'' is defined at Sec. 541.700.

Sec. 541.201 Directly related to management or general business operations.

(a) To qualify for the administrative exemption, an employee's primary duty must be the performance of work directly related to the management or general business operations of the employer or the employer's customers. The phrase ''directly related to the management or general business operations'' refers to the type of work performed by the employee. To meet this requirement, an employee must perform work directly related to assisting with the running or servicing of the business, as distinguished, for example, from working on a manufacturing production line or selling a product in a retail or service establishment.

(b) Work directly related to management or general business operations includes, but is not limited to, work in functional areas such as tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations, government relations; computer network, internet and database administration; legal and regulatory compliance; and similar activities. Some of these activities may be performed by employees who also would qualify for another exemption.

(c) An employee may qualify for the administrative exemption if the employee's primary duty is the performance of work directly related to the management or general business operations of the employer's customers. Thus, for example, employees acting as advisers or consultants to their employer's clients or customers (as tax experts or financial consultants, for example) may be exempt.

Sec. 541.202 Discretion and independent judgment.

(a) To qualify for the administrative exemption, an employee's primary duty must include the exercise of discretion and independent judgment with respect to matters of significance. In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered. The term ''matters of significance'' refers to the level of importance or consequence of the work performed.

(b) The phrase ''discretion and independent judgment'' must be applied in the light of all the facts involved in the particular employment situation in which the question arises. Factors to consider when determining whether an employee exercises discretion and independent judgment with respect to matters of significance include, but are not limited to: whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices; whether the employee carries out major assignments in conducting the operations of the business; whether the employee performs work that affects business operations to a substantial degree, even if the employee's assignments are related to operation of a particular segment of the business; whether the employee has authority to commit the employer in matters that have significant financial impact; whether the employee has authority to waive or deviate from established policies and procedures without prior approval; whether the employee has authority to negotiate and bind the company on significant matters; whether the employee provides consultation or expert advice to management; whether the employee is involved in planning long- or short-term business objectives; whether the employee investigates and resolves matters of significance on behalf of management; and whether the employee represents the company in handling complaints, arbitrating disputes or resolving grievances.

(c) The exercise of discretion and independent judgment implies that the employee has authority to make an independent choice, free from immediate direction or supervision. However, employees can exercise discretion and independent judgment even if their decisions or recommendations are reviewed at a higher level. Thus, the term ''discretion and independent judgment'' does not require that the decisions made by an employee have a finality that goes with unlimited authority and a complete absence of review. The decisions made as a result of the exercise of discretion and independent judgment may consist of recommendations for action rather than the actual taking of action. The fact that an employee's decision may be subject to review and that upon occasion the decisions are revised or reversed after review does not mean that the employee is not exercising discretion and independent judgment. For example, the policies formulated by the credit manager of a large corporation may be subject to review by higher company officials who may approve or disapprove these policies. The management consultant who has made a study of the operations of a business and who has drawn a proposed change in organization may have the plan reviewed or revised by superiors before it is submitted to the client.

(d) An employer's volume of business may make it necessary to employ a number of employees to perform the same or similar work. The fact that many employees perform identical work or work of the same relative importance does not mean that the work of each such employee does not involve the exercise of discretion and independent judgment with respect to matters of significance.

(e) The exercise of discretion and independent judgment must be more than the use of skill in applying well-established techniques, procedures or specific standards described in manuals or other sources. See also Sec. 541.704 regarding use of manuals. The exercise of discretion and independent judgment also does not include clerical or secretarial work, recording or tabulating data, or performing other mechanical, repetitive, recurrent or routine work. An employee who simply tabulates data is not exempt, even if labeled as a ''statistician.''

(f) An employee does not exercise discretion and independent judgment with respect to matters of significance merely because the employer will experience financial losses if the employee fails to perform the job properly. For example, a messenger who is entrusted with carrying large sums of money does not exercise discretion and independent judgment with respect to matters of significance even though serious consequences may flow from the employee's neglect. Similarly, an employee who operates very expensive equipment does not exercise discretion and independent judgment with respect to matters of significance merely because improper performance of the employee's duties may cause serious financial loss to the employer.

Sec. 541.203 Administrative exemption examples.

(a) Insurance claims adjusters generally meet the duties requirements for the administrative exemption, whether they work for an insurance company or other type of company, if their duties include activities such as interviewing insureds, witnesses and physicians; inspecting property damage; reviewing factual information to prepare damage estimates; evaluating and making recommendations regarding coverage of claims; determining liability and total value of a claim; negotiating settlements; and making recommendations regarding litigation.

(b) Employees in the financial services industry generally meet the duties requirements for the administrative exemption if their duties include work such as collecting and analyzing information regarding the customer's income, assets, investments or debts; determining which financial products best meet the customer's needs and financial circumstances; advising the customer regarding the advantages and disadvantages of different financial products; and marketing, servicing or promoting the employer's financial products. However, an employee whose primary duty is selling financial products does not qualify for the administrative exemption.

(c) An employee who leads a team of other employees assigned to complete major projects for the employer (such as purchasing, selling or closing all or part of the business, negotiating a real estate transaction or a collective bargaining agreement, or designing and implementing productivity improvements) generally meets the duties requirements for the administrative exemption, even if the employee does not have direct supervisory responsibility over the other employees on the team.

(d) An executive assistant or administrative assistant to a business owner or senior executive of a large business generally meets the duties requirements for the administrative exemption if such employee, without specific instructions or prescribed procedures, has been delegated authority regarding matters of significance.

(e) Human resources managers who formulate, interpret or implement employment policies and management consultants who study the operations of a business and propose changes in organization generally meet the duties requirements for the administrative exemption. However, personnel clerks who ''screen'' applicants to obtain data regarding their minimum qualifications and fitness for employment generally do not meet the duties requirements for the administrative exemption. Such personnel clerks typically will reject all applicants who do not meet minimum standards for the particular job or for employment by the company. The minimum standards are usually set by the exempt human resources manager or other company officials, and the decision to hire from the group of qualified applicants who do meet the minimum standards is similarly made by the exempt human resources manager or other company officials. Thus, when the interviewing and screening functions are performed by the human resources manager or personnel manager who makes the hiring decision or makes recommendations for hiring from the pool of qualified applicants, such duties constitute exempt work, even though routine, because this work is directly and closely related to the employee's exempt functions.

(f) Purchasing agents with authority to bind the company on significant purchases generally meet the duties requirements for the administrative exemption even if they must consult with top management officials when making a purchase commitment for raw materials in excess of the contemplated plant needs.

(g) Ordinary inspection work generally does not meet the duties requirements for the administrative exemption. Inspectors normally perform specialized work along standardized lines involving well-established techniques and procedures which may have been catalogued and described in manuals or other sources. Such inspectors rely on techniques and skills acquired by special training or experience. They have some leeway in the performance of their work but only within closely prescribed limits.

(h) Employees usually called examiners or graders, such as employees that grade lumber, generally do not meet the duties requirements for the administrative exemption. Such employees usually perform work involving the comparison of products with established standards which are frequently catalogued. Often, after continued reference to the written standards, or through experience, the employee acquires sufficient knowledge so that reference to written standards is unnecessary. The substitution of the employee's memory for a manual of standards does not convert the character of the work performed to exempt work requiring the exercise of discretion and independent judgment.

(i) Comparison shopping performed by an employee of a retail store who merely reports to the buyer the prices at a competitor's store does not qualify for the administrative exemption. However, the buyer who evaluates such reports on competitor prices to set the employer's prices generally meets the duties requirements for the administrative exemption.

(j) Public sector inspectors or investigators of various types, such as fire prevention or safety, building or construction, health or sanitation, environmental or soils specialists and similar employees, generally do not meet the duties requirements for the administrative exemption because their work typically does not involve work directly related to the management or general business operations of the employer. Such employees also do not qualify for the administrative exemption because their work involves the use of skills and technical abilities in gathering factual information, applying known standards or prescribed procedures, determining which procedure to follow, or determining whether prescribed standards or criteria are met.

Sec. 541.204 Educational establishments.

(a) The term ''employee employed in a bona fide administrative capacity'' in section 13(a)(1) of the Act also includes employees: (1) Compensated for services on a salary or fee basis at a rate of not less than $455 per week (or $380 per week, if employed in American Samoa by employers other than the Federal Government) exclusive of board, lodging or other facilities, or on a salary basis which is at least equal to the entrance salary for teachers in the educational establishment by which employed; and (2) Whose primary duty is performing administrative functions directly related to academic instruction or training in an educational establishment or department or subdivision thereof.

(b) The term ''educational establishment'' means an elementary or secondary school system, an institution of higher education or other educational institution. Sections 3(v) and 3(w) of the Act define elementary and secondary schools as those day or residential schools that provide elementary or secondary education, as determined under State law. Under the laws of most States, such education includes the curriculums in grades 1 through 12; under many it includes also the introductory programs in kindergarten. Such education in some States may also include nursery school programs in elementary education and junior college curriculums in secondary education. The term ''other educational establishment'' includes special schools for mentally or physically disabled or gifted children, regardless of any classification of such schools as elementary, secondary or higher. Factors relevant in determining whether post-secondary career programs are educational institutions include whether the school is licensed by a state agency responsible for the state's educational system or accredited by a nationally recognized accrediting organization for career schools. Also, for purposes of the exemption, no distinction is drawn between public and private schools, or between those operated for profit and those that are not for profit.

(c) The phrase ''performing administrative functions directly related to academic instruction or training'' means work related to the academic operations and functions in a school rather than to administration along the lines of general business operations. Such academic administrative functions include operations directly in the field of education. Jobs relating to areas outside the educational field are not within the definition of academic administration.

(1) Employees engaged in academic administrative functions include: the superintendent or other head of an elementary or secondary school system, and any assistants, responsible for administration of such matters as curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students, establishing and maintaining academic and grading standards, and other aspects of the teaching program; the principal and any vice-principals responsible for the operation of an elementary or secondary school; department heads in institutions of higher education responsible for the administration of the mathematics department, the English department, the foreign language department, etc.; academic counselors who perform work such as administering school testing programs, assisting students with academic problems and advising students concerning degree requirements; and other employees with similar responsibilities.

(2) Jobs relating to building management and maintenance, jobs relating to the health of the students, and academic staff such as social workers, psychologists, lunch room managers or dietitians do not perform academic administrative functions. Although such work is not considered academic administration, such employees may qualify for exemption under Sec. 541.200 or under other sections of this part, provided the requirements for such exemptions are met.

Subpart D—Professional Employees

Sec. 541.300 General rule for professional employees.

(a) The term ''employee employed in a bona fide professional capacity'' in section 13(a)(1) of the Act shall mean any employee: (1) Compensated on a salary or fee basis at a rate of not less than $455 per week (or $380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging, or other facilities; and (2) Whose primary duty is the performance of work: (i) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or (ii) Requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

(b) The term ''salary basis'' is defined at Sec. 541.602; ''fee basis'' is defined at Sec. 541.605; ''board, lodging or other facilities'' is defined at Sec. 541.606; and ''primary duty'' is defined at Sec. 541.700.

Sec. 541.301 Learned professionals.

(a) To qualify for the learned professional exemption, an employee's primary duty must be the performance of work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction. This primary duty test includes three elements:

(1) The employee must perform work requiring advanced knowledge;

(2) The advanced knowledge must be in a field of science or learning; and (3) The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

(b) The phrase ''work requiring advanced knowledge'' means work which is predominantly intellectual in character, and which includes work requiring the consistent exercise of discretion and judgment, as distinguished from performance of routine mental, manual, mechanical or physical work. An employee who performs work requiring advanced knowledge generally uses the advanced knowledge to analyze, interpret or make deductions from varying facts or circumstances. Advanced knowledge cannot be attained at the high school level.

(c) The phrase ''field of science or learning'' includes the traditional professions of law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, various types of physical, chemical and biological sciences, pharmacy and other similar occupations that have a recognized professional status as distinguished from the mechanical arts or skilled trades where in some instances the knowledge is of a fairly advanced type, but is not in a field of science or learning.

(d) The phrase ''customarily acquired by a prolonged course of specialized intellectual instruction'' restricts the exemption to professions where specialized academic training is a standard prerequisite for entrance into the profession. The best prima facie evidence that an employee meets this requirement is possession of the appropriate academic degree. However, the word ''customarily''

means that the exemption is also available to employees in such professions who have substantially the same knowledge level and perform substantially the same work as the degreed employees, but who attained the advanced knowledge through a combination of work experience and intellectual instruction. Thus, for example, the learned professional exemption is available to the occasional lawyer who has not gone to law school, or the occasional chemist who is not the possessor of a degree in chemistry. However, the learned professional exemption is not available for occupations that customarily may be performed with only the general knowledge acquired by an academic degree in any field, with knowledge acquired through an apprenticeship, or with training in the performance of routine mental, manual, mechanical or physical processes. The learned professional exemption also does not apply to occupations in which most employees have acquired their skill by experience rather than by advanced specialized intellectual instruction.

(e)(1) Registered or certified medical technologists. Registered or certified medical technologists who have successfully completed three academic years of pre-professional study in an accredited college or university plus a fourth year of professional course work in a school of medical technology approved by the Council of Medical Education of the American Medical Association generally meet the duties requirements for the learned professional exemption. (2) Nurses. Registered nurses who are registered by the appropriate State examining board generally meet the duties requirements for the learned professional exemption. Licensed practical nurses and other similar health care employees, however, generally do not qualify as exempt learned professionals because possession of a specialized advanced academic degree is not a standard prerequisite for entry into such occupations. (3) Dental hygienists. Dental hygienists who have successfully completed four academic years of pre-professional and professional study in an accredited college or university approved by the Commission on Accreditation of Dental and Dental Auxiliary Educational Programs of the American Dental Association generally meet the duties requirements for the learned professional exemption. (4) Physician assistants. Physician assistants who have successfully completed four academic years of pre-professional and professional study, including graduation from a physician assistant program accredited by the Accreditation Review Commission on Education for the Physician Assistant, and who are certified by the National Commission on Certification of Physician Assistants generally meet the duties requirements for the learned professional exemption. (5) Accountants. Certified public accountants generally meet the duties requirements for the learned professional exemption. In addition, many other accountants who are not certified public accountants but perform similar job duties may qualify as exempt learned professionals. However, accounting clerks, bookkeepers and other employees who normally perform a great deal of routine work generally will not qualify as exempt professionals. (6) Chefs. Chefs, such as executive chefs and sous chefs, who have attained a four-year specialized academic degree in a culinary arts program, generally meet the duties requirements for the learned professional exemption. The learned professional exemption is not available to cooks who perform predominantly routine mental, manual, mechanical or physical work. (7) Paralegals. Paralegals and legal assistants generally do not qualify as exempt learned professionals because an advanced specialized academic degree is not a standard prerequisite for entry into the field. Although many paralegals possess general four-year advanced degrees, most specialized paralegal programs are two-year associate degree programs from a community college or equivalent institution. However, the learned professional exemption is available for paralegals who possess advanced specialized degrees in other professional fields and apply advanced knowledge in that field in the performance of their duties. For example, if a law firm hires an engineer as a paralegal to provide expert advice on product liability cases or to assist on patent matters, that engineer would qualify for exemption. (8) Athletic trainers. Athletic trainers who have successfully completed four academic years of pre-professional and professional study in a specialized curriculum accredited by the Commission on Accreditation of Allied Health Education Programs and who are certified by the Board of Certification of the National Athletic Trainers Association Board of Certification generally meet the duties requirements for the learned professional exemption. (9) Funeral directors or embalmers. Licensed funeral directors and embalmers who are licensed by and working in a state that requires successful completion of four academic years of pre-professional and professional study, including graduation from a college of mortuary science accredited by the American Board of Funeral Service Education, generally meet the duties requirements for the learned professional exemption.

(f) The areas in which the professional exemption may be available are expanding. As knowledge is developed, academic training is broadened and specialized degrees are offered in new and diverse fields, thus creating new specialists in particular fields of science or learning. When an advanced specialized degree has become a standard requirement for a particular occupation, that occupation may have acquired the characteristics of a learned profession. Accrediting and certifying organizations similar to those listed in paragraphs (e)(1), (e)(3), (e)(4), (e)(8) and (e)(9) of this section also may be created in the future. Such organizations may develop similar specialized curriculums and certification programs which, if a standard requirement for a particular occupation, may indicate that the occupation has acquired the characteristics of a learned profession.

Sec. 541.302 Creative professionals.

(a) To qualify for the creative professional exemption, an employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor as opposed to routine mental, manual, mechanical or physical work. The exemption does not apply to work which can be produced by a person with general manual or intellectual ability and training.

(b) To qualify for exemption as a creative professional, the work performed must be ''in a recognized field of artistic or creative endeavor.'' This includes such fields as music, writing, acting and the graphic arts.

(c) The requirement of ''invention, imagination, originality or talent'' distinguishes the creative professions from work that primarily depends on intelligence, diligence and accuracy. The duties of employees vary widely, and exemption as a creative professional depends on the extent of the invention, imagination, originality or talent exercised by the employee. Determination of exempt creative professional status, therefore, must be made on a case-by-case basis. This requirement generally is met by actors, musicians, composers, conductors, and soloists; painters who at most are given the subject matter of their painting; cartoonists who are merely told the title or underlying concept of a cartoon and must rely on their own creative ability to express the concept; essayists, novelists, short-story writers and screen-play writers who choose their own subjects and hand in a finished piece of work to their employers (the majority of such persons are, of course, not employees but self-employed); and persons holding the more responsible writing positions in advertising agencies. This requirement generally is not met by a person who is employed as a copyist, as an ''animator'' of motion-picture cartoons, or as a retoucher of photographs, since such work is not properly described as creative in character.

(d) Journalists may satisfy the duties requirements for the creative professional exemption if their primary duty is work requiring invention, imagination, originality or talent, as opposed to work which depends primarily on intelligence, diligence and accuracy. Employees of newspapers, magazines, television and other media are not exempt creative professionals if they only collect, organize and record information that is routine or already public, or if they do not contribute a unique interpretation or analysis to a news product. Thus, for example, newspaper reporters who merely rewrite press releases or who write standard recounts of public information by gathering facts on routine community events are not exempt creative professionals. Reporters also do not qualify as exempt creative professionals if their work product is subject to substantial control by the employer. However, journalists may qualify as exempt creative professionals if their primary duty is performing on the air in radio, television or other electronic media; conducting investigative interviews; analyzing or interpreting public events; writing editorials, opinion columns or other commentary; or acting as a narrator or commentator.

Sec. 541.303 Teachers.

(a) The term ''employee employed in a bona fide professional capacity'' in section 13(a)(1) of the Act also means any employee with a primary duty of teaching, tutoring, instructing or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an educational establishment by which the employee is employed. The term ''educational establishment'' is defined in Sec. 541.204(b).

(b) Exempt teachers include, but are not limited to: Regular academic teachers; teachers of kindergarten or nursery school pupils; teachers of gifted or disabled children; teachers of skilled and semi- skilled trades and occupations; teachers engaged in automobile driving instruction; aircraft flight instructors; home economics teachers; and vocal or instrumental music instructors. Those faculty members who are engaged as teachers but also spend a considerable amount of their time in extracurricular activities such as coaching athletic teams or acting as moderators or advisors in such areas as drama, speech, debate or journalism are engaged in teaching. Such activities are a recognized part of the schools' responsibility in contributing to the educational development of the student.

(c) The possession of an elementary or secondary teacher's certificate provides a clear means of identifying the individuals contemplated as being within the scope of the exemption for teaching professionals. Teachers who possess a teaching certificate qualify for the exemption regardless of the terminology (e.g., permanent, conditional, standard, provisional, temporary, emergency, or unlimited) used by the State to refer to different kinds of certificates. However, private schools and public schools are not uniform in

requiring a certificate for employment as an elementary or secondary school teacher, and a teacher's certificate is not generally necessary for employment in institutions of higher education or other educational establishments. Therefore, a teacher who is not certified may be considered for exemption, provided that such individual is employed as a teacher by the employing school or school system.

(d) The requirements of Sec. 541.300 and Subpart G (salary requirements) of this part do not apply to the teaching professionals described in this section.

Sec. 541.304 Practice of law or medicine.

(a) The term ''employee employed in a bona fide professional capacity'' in section 13(a)(1) of the Act also shall mean: (1) Any employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and is actually engaged in the practice thereof; and (2) Any employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of the profession.

(b) In the case of medicine, the exemption applies to physicians and other practitioners licensed and practicing in the field of medical science and healing or any of the medical specialties practiced by physicians or practitioners. The term ''physicians'' includes medical doctors including general practitioners and specialists, osteopathic physicians (doctors of osteopathy), podiatrists, dentists (doctors of dental medicine), and optometrists (doctors of optometry or bachelors of science in optometry).

(c) Employees engaged in internship or resident programs, whether or not licensed to practice prior to commencement of the program, qualify as exempt professionals if they enter such internship or resident programs after the earning of the appropriate degree required for the general practice of their profession.

(d) The requirements of Sec. 541.300 and subpart G (salary requirements) of this part do not apply to the employees described in this section.

Subpart E—Computer Employees

Sec. 541.400 General rule for computer employees.

(a) Computer systems analysts, computer programmers, software engineers or other similarly skilled workers in the computer field are eligible for exemption as professionals under section 13(a)(1) of the Act and under section 13(a)(17) of the Act. Because job titles vary widely and change quickly in the computer industry, job titles are not determinative of the applicability of this exemption.

(b) The section 13(a)(1) exemption applies to any computer employee compensated on a salary or fee basis at a rate of not less than $455 per week (or $380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities, and the section 13(a)(17) exemption applies to any computer employee compensated on an hourly basis at a rate not less than $27.63 an hour. In addition, under either section 13(a)(1) or section 13(a)(17) of the Act, the exemptions apply only to computer employees whose primary duty consists of: (1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications; (2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; (3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or (4) A combination of the aforementioned duties, the performance of which requires the same level of skills.

(c) The term ''salary basis'' is defined at Sec. 541.602; ''fee basis'' is defined at Sec. 541.605; ''board, lodging or other facilities'' is defined at Sec. 541.606; and ''primary duty'' is defined at Sec. 541.700.

Sec. 541.401 Computer manufacture and repair. The exemption for employees in computer occupations does not include employees engaged in the manufacture or repair of computer hardware and related equipment. Employees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs (e.g., engineers, drafters and others skilled in computer-aided design software), but who are not primarily engaged in computer systems analysis and programming or other similarly skilled computer-related occupations identified in Sec. 541.400(b), are also not exempt computer professionals.

Sec. 541.402 Executive and administrative computer employees. Computer employees within the scope of this exemption, as well as those employees not within its scope, may also have executive and administrative duties which qualify the employees for exemption under subpart B or subpart C of this part. For example, systems analysts and computer programmers generally meet the duties requirements for the administrative exemption if their primary duty includes work such as planning, scheduling, and coordinating activities required to develop systems to solve complex business, scientific or engineering problems of the employer or the employer's customers. Similarly, a senior or lead computer programmer who manages the work of two or more other programmers in a customarily recognized department or subdivision of the employer, and whose recommendations as to the hiring, firing, advancement, promotion or other change of status of the other programmers are given particular weight, generally meets the duties requirements for the executive exemption.

Subpart F—Outside Sales Employees

Sec. 541.500 General rule for outside sales employees. (a) The term ''employee employed in the capacity of outside salesman'' in section 13(a)(1) of the Act shall mean any employee: (1) Whose primary duty is: (i) making sales within the meaning of section 3(k) of the Act, or (ii) obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and (2) Who is customarily and regularly engaged away from the employer's place or places of business in performing such primary duty.

(b) The term ''primary duty'' is defined at Sec. 541.700. In determining the primary duty of an outside sales employee, work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, shall be regarded as exempt outside sales work. Other work that furthers the employee's sales efforts also shall be regarded as exempt work including, for example, writing sales reports, updating or revising the employee's sales or display catalogue, planning itineraries and attending sales conferences.

(c) The requirements of subpart G (salary requirements) of this part do not apply to the outside sales employees described in this section.

Sec. 541.501 Making sales or obtaining orders.

(a) Section 541.500 requires that the employee be engaged in: (1) Making sales within the meaning of section 3(k) of the Act, or (2) Obtaining orders or contracts for services or for the use of facilities.

(b) Sales within the meaning of section 3(k) of the Act include the transfer of title to tangible property, and in certain cases, of tangible and valuable evidences of intangible property. Section 3(k) of the Act states that ''sale'' or ''sell'' includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

(c) Exempt outside sales work includes not only the sales of commodities, but also ''obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer.'' Obtaining orders for ''the use of facilities'' includes the selling of time on radio or television, the solicitation of advertising for newspapers and other periodicals, and the solicitation of freight for railroads and other transportation agencies.

(d) The word ''services'' extends the outside sales exemption to employees who sell or take orders for a service, which may be performed for the customer by someone other than the person taking the order.

Sec. 541.502 Away from employer's place of business. An outside sales employee must be customarily and regularly engaged ''away from the employer's place or places of business.'' The outside sales employee is an employee who makes sales at the customer's place of business or, if selling door-to-door, at the customer's home. Outside sales does not include sales made by mail, telephone or the Internet unless such contact is used merely as an adjunct to personal calls. Thus, any fixed site, whether home or office, used by a salesperson as a headquarters or for telephonic solicitation of sales is considered one of the employer's places of business, even though the employer is not in any formal sense the owner or tenant of the property. However, an outside sales employee does not lose the exemption by displaying samples in hotel sample rooms during trips from city to city; these sample rooms should not be considered as the employer's places of business. Similarly, an outside sales employee does not lose the exemption by displaying the employer's products at a trade show. If selling actually occurs, rather than just sales promotion, trade shows of short duration (i.e., one or two weeks) should not be considered as the employer's place of business.

Sec. 541.503 Promotion work.

(a) Promotion work is one type of activity often performed by persons who make sales, which may or may not be exempt outside sales work, depending upon the circumstances under which it is performed. Promotional work that is actually performed incidental to and in conjunction with an employee's own outside sales or solicitations is exempt work. On the other hand, promotional work that is incidental to sales made, or to be made, by someone else is not exempt outside sales work. An employee who does not satisfy the requirements of this subpart may still qualify as an exempt employee under other subparts of this rule.

(b) A manufacturer's representative, for example, may perform various types of promotional activities such as putting up displays and posters, removing damaged or spoiled stock from the merchant's shelves or rearranging the merchandise. Such an employee can be considered an exempt outside sales employee if the employee's primary duty is making sales or contracts. Promotion activities directed toward consummation of the employee's own sales are exempt. Promotional activities designed to stimulate sales that will be made by someone else are not exempt outside sales work.

(c) Another example is a company representative who visits chain stores, arranges

the merchandise on shelves, replenishes stock by replacing old with new merchandise, sets up displays and consults with the store manager when inventory runs low, but does not obtain a commitment for additional purchases. The arrangement of merchandise on the shelves or the replenishing of stock is not exempt work unless it is incidental to and in conjunction with the employee's own outside sales. Because the employee in this instance does not consummate the sale nor direct efforts toward the consummation of a sale, the work is not exempt outside sales work.

Sec. 541.504 Drivers who sell.

(a) Drivers who deliver products and also sell such products may qualify as exempt outside sales employees only if the employee has a primary duty of making sales. In determining the primary duty of drivers who sell, work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including loading, driving or delivering products, shall be regarded as exempt outside sales work.

(b) Several factors should be considered in determining if a driver has a primary duty of making sales, including, but not limited to: a comparison of the driver's duties with those of other employees engaged as truck drivers and as salespersons; possession of a selling or solicitor's license when such license is required by law or ordinances; presence or absence of customary or contractual arrangements concerning amounts of products to be delivered; description of the employee's occupation in collective bargaining agreements; the employer's specifications as to qualifications for hiring; sales training; attendance at sales conferences; method of payment; and proportion of earnings directly attributable to sales.

(c) Drivers who may qualify as exempt outside sales employees include: (1) A driver who provides the only sales contact between the employer and the customers visited, who calls on customers and takes orders for products, who delivers products from stock in the employee's vehicle or procures and delivers the product to the customer on a later trip, and who receives compensation commensurate with the volume of products sold. (2) A driver who obtains or solicits orders for the employer's products from persons who have authority to commit the customer for purchases. (3) A driver who calls on new prospects for customers along the employee's route and attempts to convince them of the desirability of accepting regular delivery of goods. (4) A driver who calls on established customers along the route and persuades regular customers to accept delivery of increased amounts of goods or of new products, even though the initial sale or agreement for delivery was made by someone else.

(d) Drivers who generally would not qualify as exempt outside sales employees include: (1) A route driver whose primary duty is to transport products sold by the employer through vending machines and to keep such machines stocked, in good operating condition, and in good locations.

(2) A driver who often calls on established customers day after day or week after week, delivering a quantity of the employer's products at each call when the sale was not significantly affected by solicitations of the customer by the delivering driver or the amount of the sale is determined by the volume of the customer's sales since the previous delivery. (3) A driver primarily engaged in making deliveries to customers and performing activities intended to promote sales by customers (including placing point-of-sale and other advertising materials, price stamping commodities, arranging merchandise on shelves, in coolers or in cabinets, rotating stock according to date, and cleaning and otherwise servicing display cases), unless such work is in furtherance of the driver's own sales efforts.

Subpart G—Salary Requirements

Sec. 541.600 Amount of salary required.

(a) To qualify as an exempt executive, administrative or professional employee under section 13(a)(1) of the Act, an employee must be compensated on a salary basis at a rate of not less than $455 per week (or $380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities. Administrative and professional employees may also be paid on a fee basis, as defined in Sec. 541.605.

(b) The $455 a week may be translated into equivalent amounts for periods longer than one week. The requirement will be met if the employee is compensated biweekly on a salary basis of $910, semimonthly on a salary basis of $985.83, or monthly on a salary basis of $1,971.66. However, the shortest period of payment that will meet this compensation requirement is one week.

(c) In the case of academic administrative employees, the compensation requirement also may be met by compensation on a salary basis at a rate at least equal to the entrance salary for teachers in the educational establishment by which the employee is employed, as provided in Sec. 541. 204(a)(1).

(d) In the case of computer employees, the compensation requirement also may be met by compensation on an hourly basis at a rate not less than $27.63 an hour, as provided in Sec. 541. 400(b).

(e) In the case of professional employees, the compensation requirements in this section shall not apply to employees engaged as teachers (see Sec. 541.303); employees who hold a valid license or certificate permitting the practice of law or medicine or any of their branches and are actually engaged in the practice thereof (see Sec. 541.304); or to employees who hold the requisite academic degree for the general practice of medicine and are engaged in an internship or resident program pursuant to the practice of the profession (see Sec. 541.304). In the case of medical occupations, the exception from the salary or fee requirement does not apply to pharmacists, nurses, therapists, technologists, sanitarians, dietitians, social workers, psychologists, psychometrists, or other professions which service the medical profession.

Sec. 541.601 Highly compensated employees.

(a) An employee with total annual compensation of at least $100,000 is deemed exempt under section 13(a)(1) of the Act if the employee customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee identified in subparts B, C or D of this part.

(b)(1) ''Total annual compensation'' must include at least $455 per week paid on a salary or fee basis. Total annual compensation may also include commissions, nondiscretionary bonuses and other nondiscretionary compensation earned during a 52-week period. Total annual compensation does not include board, lodging and other facilities as defined in Sec. 541.606, and does not include payments for medical insurance, payments for life insurance, contributions to retirement plans and the cost of other fringe benefits. (2) If an employee's total annual compensation does not total at least the minimum amount established in paragraph (a) of this section by the last pay period of the 52-week period, the employer may, during the last pay period or within one month after the end of the 52-week period, make one final payment sufficient to achieve the required level. For example, an employee may earn $80,000 in base salary, and the employer may anticipate based upon past sales that the employee also will earn $20,000 in commissions. However, due to poor sales in the final quarter of the year, the employee actually only earns $10,000 in commissions. In this situation, the employer may within one month after the end of the year make a payment of at least $10,000 to the employee. Any such final payment made after the end of the 52-week period may count only toward the prior year's total annual compensation and not toward the total annual compensation in the year it was paid. If the employer fails to make such a payment, the employee does not qualify as a highly compensated employee, but may still qualify as exempt under subparts B, C or D of this part. (3) An employee who does not work a full year for the employer, either because the employee is newly hired after the beginning of the year or ends the employment before the end of the year, may qualify for exemption under this section if the employee receives a pro rata portion of the minimum amount established in paragraph (a) of this section, based upon the number of weeks that the employee will be or has been employed. An employer may make one final payment as under paragraph (b)(2) of this section within one month after the end of employment. (4) The employer may utilize any 52-week period as the year, such as a calendar year, a fiscal year, or an anniversary of hire year. If the employer does not identify some other year period in advance, the calendar year will apply.

(c) A high level of compensation is a strong indicator of an employee's exempt status, thus eliminating the need for a detailed analysis of the employee's job duties. Thus, a highly compensated employee will qualify for exemption if the employee customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee identified in subparts B, C or D of this part. An employee may qualify as a highly compensated executive employee, for example, if the employee customarily and regularly directs the work of two or more other employees, even though the employee does not meet all of the other requirements for the executive exemption under Sec. 541.100.

(d) This section applies only to employees whose primary duty includes performing office or non-manual work. Thus, for example, non-management production-line workers and non management employees in maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers, laborers and other employees who perform work involving repetitive operations with their hands, physical skill and energy are not exempt under this section no matter how highly paid they might be.

Sec. 541.602 Salary basis.

(a) General rule. An employee will be considered to be paid on a ''salary basis'' within the meaning of these regulations if the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. Subject to the exceptions provided in paragraph (b) of this section, an exempt employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked. Exempt employees need not be paid for any workweek in which they perform no work. An employee is not paid on a salary basis if deductions from

the employee's predetermined compensation are made for absences occasioned by the employer or by the operating requirements of the business. If the employee is ready, willing and able to work, deductions may not be made for time when work is not available.

(b) Exceptions. The prohibition against deductions from pay in the salary basis requirement is subject to the following exceptions: (1) Deductions from pay may be made when an exempt employee is absent from work for one or more full days for personal reasons, other than sickness or disability. Thus, if an employee is absent for two full days to handle personal affairs, the employee's salaried status will not be affected if deductions are made from the salary for two full day absences. However, if an exempt employee is absent for one and a half days for personal reasons, the employer can deduct only for the one full-day absence. (2) Deductions from pay may be made for absences of one or more full days occasioned by sickness or disability (including work-related accidents) if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by such sickness or disability. The employer is not required to pay any portion of the employee's salary for full-day absences for which the employee receives compensation under the plan, policy or practice. Deductions for such full-day absences also may be made before the employee has qualified under the plan, policy or practice, and after the employee has exhausted the leave allowance thereunder. Thus, for example, if an employer maintains a short-term disability insurance plan providing salary replacement for 12 weeks starting on the fourth day of absence, the employer may make deductions from pay for the three days of absence before the employee qualifies for benefits under the plan; for the twelve weeks in which the employee receives salary replacement benefits under the plan; and for absences after the employee has exhausted the 12 weeks of salary replacement benefits. Similarly, an employer may make deductions from pay for absences of one or more full days if salary replacement benefits are provided under a State disability insurance law or under a State workers' compensation law. (3) While an employer cannot make deductions from pay for absences of an exempt employee occasioned by jury duty, attendance as a witness or temporary military leave, the employer can offset any amounts received by an employee as jury fees, witness fees or military pay for a particular week against the salary due for that particular week without loss of the exemption. (4) Deductions from pay of exempt employees may be made for penalties imposed in good faith for infractions of safety rules of major significance. Safety rules of major significance include those relating to the prevention of serious danger in the workplace or to other employees, such as rules prohibiting smoking in explosive plants, oil refineries and coal mines. (5) Deductions from pay of exempt employees may be made for unpaid disciplinary suspensions of one or more full days imposed in good faith for infractions of workplace conduct rules. Such suspensions must be imposed pursuant to a written policy applicable to all employees. Thus, for example, an employer may suspend an exempt employee without pay for three days for violating a generally applicable written policy prohibiting sexual harassment. Similarly, an employer may suspend an exempt employee without pay for twelve days for violating a generally applicable written policy prohibiting workplace violence. (6) An employer is not required to pay the full salary in the initial or terminal week of employment. Rather, an employer may pay a proportionate part of an employee's full salary for the time actually worked in the first and last week of employment. In such weeks, the payment of an hourly or daily equivalent of the employee's full salary for the time actually worked will meet the requirement. However, employees are not paid on a salary basis within the meaning of these regulations if they are employed occasionally for a few days, and the employer pays them a proportionate part of the weekly salary when so employed. (7) An employer is not required to pay the full salary for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act. Rather, when an exempt employee takes unpaid leave under the Family and Medical Leave Act, an employer may pay a proportionate part of the full salary for time actually worked. For example, if an employee who normally works 40 hours per week uses four hours of unpaid leave under the Family and Medical Leave Act, the employer could deduct 10 percent of the employee's normal salary that week.

(c) When calculating the amount of a deduction from pay allowed under paragraph (b) of this section, the employer may use the hourly or daily equivalent of the employee's full weekly salary or any other amount proportional to the time actually missed by the employee. A deduction from pay as a penalty for violations of major safety rules under paragraph (b)(4) of this section may be made in any amount.

Sec. 541.603 Effect of improper deductions from salary.

(a) An employer who makes improper deductions from salary shall lose the exemption if the facts demonstrate that the employer did not intend to pay employees on a salary basis. An actual practice of making improper deductions demonstrates that the employer did not intend to pay employees on a salary basis. The factors to consider when determining whether an employer has an actual practice of making improper deductions include, but are not limited to: the number of improper deductions, particularly as compared to the number of employee infractions warranting discipline; the time period during which the employer made improper deductions; the number and geographic location of employees whose salary was improperly reduced; the number and geographic location of managers responsible for taking the improper deductions; and whether the employer has a clearly communicated policy permitting or prohibiting improper deductions.

(b) If the facts demonstrate that the employer has an actual practice of making improper deductions, the exemption is lost during the time period in which the improper deductions were made for employees in the same job classification working for the same managers responsible for the actual improper deductions. Employees in different job classifications or who work for different managers do not lose their status as exempt employees. Thus, for example, if a manager at a company facility routinely docks the pay of engineers at that facility for partial-day personal absences, then all engineers at that facility whose pay could have been improperly docked by the manager would lose the exemption; engineers at other facilities or working for other managers, however, would remain exempt.

(c) Improper deductions that are either isolated or inadvertent will not result in loss of the exemption for any employees subject to such improper deductions, if the employer reimburses the employees for such improper deductions.

(d) If an employer has a clearly communicated policy that prohibits the improper pay deductions specified in Sec. 541.602(a) and includes a complaint mechanism, reimburses employees for any improper deductions and makes a good faith commitment to comply in the future, such employer will not lose the exemption for any employees unless the employer willfully violates the policy by continuing to make improper deductions after receiving employee complaints. If an employer fails to reimburse employees for any improper deductions or continues to make improper deductions after receiving employee complaints, the exemption is lost during the time period in which the improper deductions were made for employees in the same job classification working for the same managers responsible for the actual improper deductions. The best evidence of a clearly communicated policy is a written policy that was distributed to employees prior to the improper pay deductions by, for example, providing a copy of the policy to employees at the time of hire, publishing the policy in an employee handbook or publishing the policy on the employer's Intranet.

(e) This section shall not be construed in an unduly technical manner so as to defeat the exemption.

Sec. 541.604 Minimum guarantee plus extras.

(a) An employer may provide an exempt employee with additional compensation without losing the exemption or violating the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly-required amount paid on a salary basis. Thus, for example, an exempt employee guaranteed at least $455 each week paid on a salary basis may also receive additional compensation of a one percent commission on sales. An exempt employee also may receive a percentage of the sales or profits of the employer if the employment arrangement also includes a guarantee of at least $455 each week paid on a salary basis. Similarly, the exemption is not lost if an exempt employee who is guaranteed at least $455 each week paid on a salary basis also receives additional compensation based on hours worked for work beyond the normal workweek. Such additional compensation may be paid on any basis (e.g., flat sum, bonus payment, straight-time hourly amount, time and one-half or any other basis), and may include paid time off.

(b) An exempt employee's earnings may be computed on an hourly, a daily or a shift basis, without losing the exemption or violating the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly required amount paid on a salary basis regardless of the number of hours, days or shifts worked, and a reasonable relationship exists between the guaranteed amount and the amount actually earned. The reasonable relationship test will be met if the weekly guarantee is roughly equivalent to the employee's usual earnings at the assigned hourly, daily or shift rate for the employee's normal scheduled workweek. Thus, for example, an exempt employee guaranteed compensation of at least $500 for any week in which the employee performs any work, and who normally works four or five shifts each week, may be paid $150 per shift without violating the salary basis requirement. The reasonable relationship requirement applies only if the employee's pay is computed on an hourly, daily or shift basis. It does not apply, for example, to an exempt store manager paid a guaranteed salary of $650 per week who also receives a commission of one-half percent of all sales in the store or five percent of the store's profits, which in some weeks may total as much as, or even more than, the guaranteed salary.

Sec. 541.605 Fee basis.

(a) Administrative and professional employees may be paid on a fee basis, rather

than on a salary basis. An employee will be considered to be paid on a ''fee basis'' within the meaning of these regulations if the employee is paid an agreed sum for a single job regardless of the time required for its completion. These payments resemble piecework payments with the important distinction that generally a ''fee'' is paid for the kind of job that is unique rather than for a series of jobs repeated an indefinite number of times and for which payment on an identical basis is made over and over again. Payments based on the number of hours or days worked and not on the accomplishment of a given single task are not considered payments on a fee basis.

(b) To determine whether the fee payment meets the minimum amount of salary required for exemption under these regulations, the amount paid to the employee will be tested by determining the time worked on the job and whether the fee payment is at a rate that would amount to at least $455 per week if the employee worked 40 hours. Thus, an artist paid $250 for a picture that took 20 hours to complete meets the minimum salary requirement for exemption since earnings at this rate would yield the artist $500 if 40 hours were worked.

Sec. 541.606 Board, lodging or other facilities.

(a) To qualify for exemption under section 13(a)(1) of the Act, an employee must earn the minimum salary amount set forth in Sec. 541.600, ''exclusive of board, lodging or other facilities.'' The phrase ''exclusive of board, lodging or other facilities'' means ''free and clear'' or independent of any claimed credit for non-cash items of value that an employer may provide to an employee. Thus, the costs incurred by an employer to provide an employee with board, lodging or other facilities may not count towards the minimum salary amount required for exemption under this part 541. Such separate transactions are not prohibited between employers and their exempt employees, but the costs to employers associated with such transactions may not be considered when determining if an employee has received the full required minimum salary payment.

(b) Regulations defining what constitutes ''board, lodging, or other facilities'' are contained in 29 CFR part 531. As described in 29 CFR 531.32, the term ''other facilities'' refers to items similar to board and lodging, such as meals furnished at company restaurants or cafeterias or by hospitals, hotels, or restaurants to their employees; meals, dormitory rooms, and tuition furnished by a college to its student employees; merchandise furnished at company stores or commissaries, including articles of food, clothing, and household effects; housing furnished for dwelling purposes; and transportation furnished to employees for ordinary commuting between their homes and work. *[[*Good cause for the inclusion of subsection (b): The regulations referenced in this paragraph at 29 CFR 531.29 are not substantive regulations, but are ''interpretive'' regulations which were not incorporated in Part 531 of the CAA regulations adopted in 1996. However, the Board of Directors has determined that, since these particular interpretive regulations are incorporated by reference in the new substantive regulations, employing offices and employees may reference these particular interpretive regulations as part of the new substantive regulations as proposed here.*]]*

Subpart H—Definitions and Miscellaneous Provisions

Sec. 541.700 Primary duty.

(a) To qualify for exemption under this part, an employee's ''primary duty'' must be the performance of exempt work. The term ''primary duty'' means the principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole. Factors to consider when determining the primary duty of an employee include, but are not limited to, the relative importance of the exempt duties as compared with other types of duties; the amount of time spent performing exempt work; the employee's relative freedom from direct supervision; and the relationship between the employee's salary and the wages paid to other employees for the kind of nonexempt work performed by the employee.

(b) The amount of time spent performing exempt work can be a useful guide in determining whether exempt work is the primary duty of an employee. Thus, employees who spend more than 50 percent of their time performing exempt work will generally satisfy the primary duty requirement. Time alone, however, is not the sole test, and nothing in this section requires that exempt employees spend more than 50 percent of their time performing exempt work. Employees who do not spend more than 50 percent of their time performing exempt duties may nonetheless meet the primary duty requirement if the other factors support such a conclusion.

(c) Thus, for example, assistant managers in a retail establishment who perform exempt executive work such as supervising and directing the work of other employees, ordering merchandise, managing the budget and authorizing payment of bills may have management as their primary duty even if the assistant managers spend more than 50 percent of the time performing nonexempt work such as running the cash register. However, if such assistant managers are closely supervised and earn little more than the nonexempt employees, the assistant managers generally would not satisfy the primary duty requirement.

Sec. 541.701 Customarily and regularly. The phrase ''customarily and regularly'' means a frequency that must be greater than occasional but which, of course, may be less than constant. Tasks or work performed ''customarily and regularly'' includes work normally and recurrently performed every workweek; it does not include isolated or one-time tasks.

Sec. 541.702 Exempt and nonexempt work. The term ''exempt work'' means all work described in Sec. 541.100, 541.101, 541.200, 541.300, 541.301, 541.302, 541.303, 541.304, 541.400 and 541.500, and the activities directly and closely related to such work. All other work is considered ''nonexempt.''

Sec. 541.703 Directly and closely related.

(a) Work that is ''directly and closely related'' to the performance of exempt work is also considered exempt work. The phrase ''directly and closely related'' means tasks that are related to exempt duties and that contribute to or facilitate performance of exempt work. Thus, ''directly and closely related'' work may include physical tasks and menial tasks that arise out of exempt duties, and the routine work without which the exempt employee's exempt work cannot be performed properly. Work ''directly and closely related'' to the performance of exempt duties may also include recordkeeping; monitoring and adjusting machinery; taking notes; using the computer to create documents or presentations; opening the mail for the purpose of reading it and making decisions; and using a photocopier or fax machine. Work is not ''directly and closely related'' if the work is remotely related or completely unrelated to exempt duties.

(b) The following examples further illustrate the type of work that is and is not normally considered as directly and closely related to exempt work: (1) Keeping time, production or sales records for subordinates is work directly and closely related to an exempt executive's function of managing a department and supervising employees. (2) The distribution of materials, merchandise or supplies to maintain control of the flow of and expenditures for such items is directly and closely related to the performance of exempt duties. (3) A supervisor who spot checks and examines the work of subordinates to determine whether they are performing their duties properly, and whether the product is satisfactory, is performing work which is directly and closely related to managerial and supervisory functions, so long as the checking is distinguishable from the work ordinarily performed by a nonexempt inspector. (4) A supervisor who sets up a machine may be engaged in exempt work, depending upon the nature of the industry and the operation. In some cases the setup work, or adjustment of the machine for a particular job, is typically performed by the same employees who operate the machine. Such setup work is part of the production operation and is not exempt. In other cases, the setting up of the work is a highly skilled operation which the ordinary production worker or machine tender typically does not perform. In large plants, non-supervisors may perform such work. However, particularly in small plants, such work may be a regular duty of the executive and is directly and closely related to the executive's responsibility for the work performance of subordinates and for the adequacy of the final product. Under such circumstances, it is exempt work. (5) A department manager in a retail or service establishment who walks about the sales floor observing the work of sales personnel under the employee's supervision to determine the effectiveness of their sales techniques, checks on the quality of customer service being given, or observes customer preferences is performing work which is directly and closely related to managerial and supervisory functions. (6) A business consultant may take extensive notes recording the flow of work and materials through the office or plant of the client; after returning to the office of the employer, the consultant may personally use the computer to type a report and create a proposed table of organization. Standing alone, or separated from the primary duty, such note-taking and typing would be routine in nature. However, because this work is necessary for analyzing the data and making recommendations, the work is directly and closely related to exempt work. While it is possible to assign note-taking and typing to nonexempt employees, and in fact it is frequently the practice to do so, delegating such routine tasks is not required as a condition of exemption. (7) A credit manager who makes and administers the credit policy of the employer, establishes credit limits for customers, authorizes the shipment of orders on credit, and makes decisions on whether to exceed credit limits would be performing work exempt under Sec. 541.200. Work that is directly and closely related to these exempt duties may include checking the status of accounts to determine whether the credit limit would be exceeded by the shipment of a new order, removing credit reports from the files for analysis, and writing letters giving credit data and experience to other employers or credit agencies. (8) A traffic manager in charge of planning a company's transportation, including the most economical and quickest routes for shipping merchandise to and from the plant, contracting for common-carrier and other transportation facilities, negotiating with carriers for adjustments for damages to

merchandise, and making the necessary rearrangements resulting from delays, damages or irregularities in transit, is performing exempt work. If the employee also spends part of the day taking telephone orders for local deliveries, such order-taking is a routine function and is not directly and closely related to the exempt work. (9) An example of work directly and closely related to exempt professional duties is a chemist performing menial tasks such as cleaning a test tube in the middle of an original experiment, even though such menial tasks can be assigned to laboratory assistants. (10) A teacher performs work directly and closely related to exempt duties when, while taking students on a field trip, the teacher drives a school van or monitors the students' behavior in a restaurant.

Sec. 541.704 Use of manuals. The use of manuals, guidelines or other established procedures containing or relating to highly technical, scientific, legal, financial or other similarly complex matters that can be understood or interpreted only by those with advanced or specialized knowledge or skills does not preclude exemption under section 13(a)(1) of the Act or the regulations in this part. Such manuals and procedures provide guidance in addressing difficult or novel circumstances and thus use of such reference material would not affect an employee's exempt status. The section 13(a)(1) exemptions are not available, however, for employees who simply apply well-established techniques or procedures described in manuals or other sources within closely prescribed limits to determine the correct response to an inquiry or set of circumstances.

Sec. 541.705 Trainees. The executive, administrative, professional, outside sales and computer employee exemptions do not apply to employees training for employment in an executive, administrative, professional, outside sales or computer employee capacity who are not actually performing the duties of an executive, administrative, professional, outside sales or computer employee.

Sec. 541.706 Emergencies.

(a) An exempt employee will not lose the exemption by performing work of a normally nonexempt nature because of the existence of an emergency. Thus, when emergencies arise that threaten the safety of employees, a cessation of operations or serious damage to the employer's property, any work performed in an effort to prevent such results is considered exempt work.

(b) An ''emergency'' does not include occurrences that are not beyond control or for which the employer can reasonably provide in the normal course of business. Emergencies generally occur only rarely, and are events that the employer cannot reasonably anticipate.

(c) The following examples illustrate the distinction between emergency work considered exempt work and routine work that is not exempt work: (1) A mine superintendent who pitches in after an explosion and digs out workers who are trapped in the mine is still a bona fide executive. (2) Assisting nonexempt employees with their work during periods of heavy workload or to handle rush orders is not exempt work. (3) Replacing a nonexempt employee during the first day or partial day of an illness may be considered exempt emergency work depending on factors such as the size of the establishment and of the executive's department, the nature of the industry, the consequences that would flow from the failure to replace the ailing employee immediately, and the feasibility of filling the employee's place promptly. (4) Regular repair and cleaning of equipment is not emergency work, even when necessary to prevent fire or explosion; however, repairing equipment may be emergency work if the breakdown of or damage to the equipment was caused by accident or carelessness that the employer could not reasonably anticipate.

Sec. 541.707 Occasional tasks. Occasional, infrequently recurring tasks that cannot practicably be performed by nonexempt employees, but are the means for an exempt employee to properly carry out exempt functions and responsibilities, are considered exempt work. The following factors should be considered in determining whether such work is exempt work: Whether the same work is performed by any of the exempt employee's subordinates; practicability of delegating the work to a nonexempt employee; whether the exempt employee performs the task frequently or occasionally; and existence of an industry practice for the exempt employee to perform the task.

Sec. 541.708 Combination exemptions. Employees who perform a combination of exempt duties as set forth in the regulations in this part for executive, administrative, professional, outside sales and computer employees may qualify for exemption. Thus, for example, an employee whose primary duty involves a combination of exempt administrative and exempt executive work may qualify for exemption. In other words, work that is exempt under one section of this part will not defeat the exemption under any other section.

Sec. 541.709 Motion picture producing industry. The requirement that the employee be paid ''on a salary basis'' does not apply to an employee in the motion picture producing industry who is compensated at a base rate of at least $695 a week (exclusive of board, lodging, or other facilities). Thus, an employee in this industry who is otherwise exempt under subparts B, C or D of this part, and who is employed at a base rate of at least $695 a week is exempt if paid a proportionate amount (based on a week of not more than 6 days) for any week in which the employee does not work a full workweek for any reason. Moreover, an otherwise exempt employee in this industry qualifies for exemption if the employee is employed at a daily rate under the following circumstances: (a) The employee is in a job category for which a weekly base rate is not provided and the daily base rate would yield at least $695 if 6 days were worked; or (b) The employee is in a job category having a weekly base rate of at least $695 and the daily base rate is at least one-sixth of such weekly base rate.

Sec. 541.710 Employees of Public Agencies. (a) An employee of a public agency who otherwise meets the salary basis requirements of section 541.602 shall not be disqualified from exemption under sections 541.100, 541.200, 541.300 or 541.400 on the basis that such employee is paid according to a pay system established by statute, ordinance, or regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and which requires the public agency employee's pay to be reduced or such employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one work-day when accrued leave is not used by an employee because: (1) Permission for its use has not been sought or has been sought or denied; (2) Accrued leave has been exhausted; (3) The employee chooses to use leave without pay. (b) Deductions from the pay of an employee of a public agency for absences due to a budget required furlough shall not disqualify the employee from being paid on a salary basis except on the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced.

## 40TH ANNIVERSARY OF THE WILDERNESS ACT

Mr. MCCAIN. Mr. President, throughout our country's history there have been many debates in the Congress over the use, conservation, and protection of our natural resources. These debates have resulted in landmark policies, such as the Louisiana Purchase, the Homestead Act, and the establishment of the world's first national park, Yellowstone, in 1872.

Natural resource and environmental issues are inherently complex and often controversial, for they involve tradeoffs in which many diverse interests have a stake. There is one interest that cannot speak for itself and relies upon the vision of others; the interest of future generations. Teddy Roosevelt said it best, it seems to me, in his 1916 book, A Book-Lover's Holidays in the Open, where he castigates those ''short-sighted men who in their greed and selfishness will, if permitted, rob our country of half its charm by their reckless extermination of all useful and beautiful wild things''. He goes on to say, ''Our duty to the whole, including the unborn generations, bids us restrain an unprincipled present-day minority from wasting the heritage of these unborn generations. The movement for the conservation of wild life and the larger movement for the conservation of all our natural resources are essentially democratic in spirit, purpose, and method.''

It is in this spirit of our moral obligation to the future—to those who, in Teddy Roosevelt's memorable phrase, are ''within the womb of time''—that I wish to salute the 40th anniversary of the Wilderness Act of 1964. I am pleased to lend my support to this bipartisan resolution honoring the milestone legislation preserving our Nation's rare and spectacular wild places.

Arizona has the good fortune to have numerous preserved wilderness areas, thanks to this law. In fact, more than 4,500,000 acres have been preserved in 90 wilderness areas. These range from the Cabeza Prieta Wilderness of more than 800,000 acres, to the 2,040 acre Baboquivari Peak Wilderness, an extraordinary area designated in 1990. From our desert expanses to the heights of 12,643-foot Humphrey's Peak, the highest point in Arizona, protected within the Kachina Peaks Wilderness, Arizona is not only one of America's fastest-growing states, but also a state in which we preserve and treasure our wilderness heritage.

In 1936, the great forester and wilderness champion, Bob Marshall, spoke of the luxury—a privilege—we Americans have. He commented that Americans can enjoy ''a twofold civilization—the mechanized, comfortable, easy civilization of twentieth-century modernity, and the peaceful timelessness of the wilderness where vast forests germinate and flourish and die and rot and grow again without any relationship to the ambitions and interferences of man.''

In spite of the environmental challenges that face our country and the world today, I am very grateful for the vision of past leaders that enacted this law to ensure that those who inhabit our nation many generations into the future will be able to experience wilderness in their lives, as we do today. As we celebrate the protection of existing and additional wilderness areas under this historic law, we follow our most noble and nonpartisan traditions of national resource conservation.

Mr. President, I ask unanimous consent to have printed in the RECORD the following statement of Stewart Udall, one of our Nation's conservation leaders and the Secretary of the Interior in the Kennedy and Johnson administrations, presented at an event on September 19, 2004, commemorating the 40th anniversary of the Wilderness Act.

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

REMARKS BY FORMER INTERIOR SECRETARY STEWART UDALL—WILDERNESS ACT COMMEMORATIVE DINNER, WASHINGTON, DC, SEPTEMBER 19, 2004

I am honored and delighted to be here tonight with John Dingell and Gaylord Nelson and Bob Byrd. I was running for Congress 50 years ago right now, and I came in the door with John Dingell and Bob Byrd had been there two years, and they considered him a ''hick,''—he played the fiddle, he loved the folk music of his people and now he is the conscience of the Senate.

If you want to know why I say that, you will buy his book, ''Losing America,'' and find out what his message is. John Dingell, you were given too little credit tonight. The National Environmental Policy Act would probably not have been passed if it had not been for John Dingell. What you don't know is Wayne Aspinell thought it was a crazy idea, and John Dingell said ''if he doesn't want it, then I will pick it up.'' And he carried the mail through the House. So I want to say something—I'm on a ''lecture tour'' this evening. There was something about that time, and John Dingell and I discussed it—the 60s into the 70s was called a golden age of sorts. One of the things that comes to my mind as I go back there is the way you saw young Congressmen and Senators who were pretty raw in the beginning, but they had open minds and they grew and they developed new convictions and they developed new horizons. One example was John and Robert Kennedy—changing before your eyes. And John Dingell and Bob Byrd are examples of this, and my brother—yes, my brother. It did not take him long to enlarge his mind and encompass it. And that is a great gift—to be open minded and have the capacity to grow. It's a very great gift. And can we see members of congress now, too many of them that come in with fixed ideologies and fixed views, and they will stay for 10 or 25 years, and when they leave they have the very same views. They haven't changed a damn thing. It's pathetic.

So now a lot of it's been covered, and I only have time to hit a few high notes because I promised Mike Matz (executive director of the Campaign for America's Wilderness) that I would give out of my faulty memory some of the highlights of the Wilderness bill. And this is an extraordinary story. The wilderness idea—it originated here in this country. The national park idea originated in this country —the idea of setting aside areas. And Bob Marshall, Aldo Leopold, and a little group came up with this, and it was thought to be a far-out and crazy idea, and it culminated with the introduction of the wilderness bill.

One person left out was Humphrey, John Saylor—what a great man he was. Thomas Kuchel, Republican from California was one. And he shortly became the deputy leader—the whip to Everett Dirksen, and the reason we got an overwhelming bipartisan vote, in the Senate, was Tom Kuchel. Tom Kuchel, so give him credit for it. What a great, great man he was. To show you the spirit of bipartisanship, we worked on Point Reyes together. When I went to his office, he'd say, ''Hi Stewie, what do you want today?'' And that's the way it was in that period. But the Wilderness Bill—Howard Zahniser—Mr. Zahniser—the man was a saint. He rewrote and touched up that bill 60 times over a period of 8 years. Every time Aspinall raised a new argument, he'd work on a little language and tried to offset it. He was truly a saintly person—a poet, a lover of Thoreau, a wonderful man.

But when the wilderness bill got off the ground, and too much we, all of us, when it's all over, like to take credit. I have been given more than my share tonight. Two persons I would single out are President John F. Kennedy and Senator Clinton Anderson of New Mexico. Clint Anderson had been as a young insurance man, a personal friend of Aldo Leopold in Albuquerque, and when he became chairman of the Committee after the 1960 election, and Kennedy was president. I didn't tell Kennedy what to do. Clint Anderson went to the White House and said, ''Kennedy didn't campaign on wilderness, I can't find anything in the campaign.'' He said put in your message to Congress on conservation—Presidents used to send up such messages, if they had a conservation program—a call for the enactment of a wilderness bill along the lines of Senate bill five—his bill. Kennedy put it in, and that electrified the country—to have a call like that. And in July the bill went to the floor of the Senate, and I'll tell you I was startled. I was startled, Senator Byrd. The vote was 78 to 12, and people all over the country—the conservationists—suddenly began to arouse and see how much power they have.

We give too much credit in my view—I was a Congressman—to members of Congress. Lyndon Johnson was great at that—''the Congress, they did it''. They enact laws, yes. But there was an upsurge, an uplifting of people. Conservation had been put on the shelf after Pearl Harbor and then there was a Cold War and Kennedy issued a call for national seashores and we got started on 14 of them. Some of them passed later on, but I have to say what made it all possible was a bipartisanship and affection between the members of the old generation—my generation. We were depression kids, we fought the war, we believed in mutual respect. That was what made it so wonderful in those days. And that spirit carried forward. Richard Nixon was a damn good conservation president.

I like metaphors, and I have likened what happened—we just saw the Olympics—to a relay race, because the work and conservation in those days was never finished. There was a pipeline. Heavens, it took Gaylord Nelson—because he wanted the people to accept it—12 years to do the Apostle Islands National Seashore. It took Bill Hart 10 years to do Sleeping Bear Dunes in Michigan. And this meant that when we came, and a different party won the White House, you carried the baton. I am not sure Nixon understood in the beginning, but they took it and they ran with it. Russell Train, Nat Reed—those wonderful people who put that ad in the newspaper last month that said ''Come back to the mainstream, come back to the main stream.'' And Gerald Ford carried it on, and Jimmy Carter. And then—no names mentioned—but a Secretary of the Interior when 1981 began, refused. In fact, he said—and I never understood where he was coming from—we've been going in the wrong direction for the last 20 years, so he wouldn't take the baton. And it has been on the floor ever since.

The bipartisanship by these five presidents was ended, and I want to say because there is so much doublespeak these days—don't let a president or his people say because he signed a wilderness bill that he is for wilderness. Does he issue a call for more wilderness? That's the test. That's the test. The Land and Water Conservation Fund—oh I can take some credit on that, but I won't—too long. Do you know, 10 billion dollars in 1960 dollars, Senator Byrd, went into that program and half of it went to the states and they matched it, and almost 40 thousand projects—cities, counties, open space, playgrounds—boy, do we need playgrounds with this plague of obesity that is claiming this country. We ought to go back to that program.

Well that's enough, I guess, and you know how strongly I feel. The fight is not over, as everyone has said tonight. And we may have gaps and we have an ebb and flow. I'd like to believe, I am a troubled optimist, but there will be a flow again in terms of wilderness preservation. And I like to end, and my vision is gone so I have to memorize things. I can't use notes, I just blabber away. Congressman Aspinall—from Colorado—was an honorable man, as John Dingell and I have discussed. He was strong-headed, but an honorable man. Very stubborn and he could be dictatorial. He wouldn't even let his committee consider the bill—no hearings—no bill reported. John Saylor would say, ''Wayne, you cannot get away with this forever,'' and we tried to persuade him. Where was he? He said to me once, Stuart—I was one of his boys, I trained under him, he taught you a lot of things—and he said people that don't understand me, don't understand that my congressional district is a mining district. It had been a mining district. He was a great champion of the American Mining Congress. He regarded a wilderness bill as a lock up. That was the argument that Howard Zanhiser had to work against all the time. He said, ''Stuart, you may get a bill from out of my committee, but you might not recognize it.'' And so it came to a compromise. And he and Clinton Anderson were two old bulls that ended up hating and distrusting each other. And Anderson's bill had all of the elements, the framework, and the language about how you identified a wilderness bill and how you passed a wilderness bill. And Anderson put in 50 million acres of lands that the Forest Service largely had already identified. Aspinall cut it back to nine. And they made the compromise because Anderson had to give in if he wanted to get a wilderness bill. So it was cut way back. Aspinall thought it might be true today—but not in the next 20 or 30 years—that if every bill had to pass individually through the Senate and House, that Congressmen who held the views that he did, would not want a wilderness in their area because it was locking up very valuable resources. And so that is the way it played out. And the wilderness bill—the essential elements of the wilderness bill—were there when the bill was passed. And this was a great moment for the country. What happened was the citizens all over the country—in the West and the East, the Congressmen and the Senators got behind wilderness bills, and that is why we have the 110 million acres today.

I have to say one final thing about Mo Udall, my brother, and this is getting back, Senator Byrd, to your book because the whole democratic process as far as I can see, is gone in the House of Representatives. It's gone. We have another man that says no bill will go out of his committee unless it meets my personal standards. What kind of democracy is that? Mo Udall was committed to the idea—he wrote a book, it's been thrown away, ''The Job of A Congressman.'' A bill is introduced, you have hearings—everybody that wants to be heard can be heard—you have field hearings, you mark up a bill, the committees work their will—if it can survive the committee it goes to the floor of the House and the House works its will. That's democracy, and that's what he was committed to, and that is gone now. Things are tucked into appropriation bills now. A democracy has been watered down and disappeared, and that is one of the things Senator Byrd's book is about.

So let's bear that in mind, but don't give up. Don't give out—the fight goes on. I'm finally going to end, I'm sorry, I got carried away. The case for wilderness was made against the lock up argument by Clinton Anderson, who said ''wilderness is an anchor to windward.'' Knowing it is there, we can go about our business of managing our resources wisely and not be a people in despair, ransacking our public lands for the last barrel of oil, the last board of timber, the last blade of grass, the last tank of water. That was Clint Anderson's answer to the lock up argument.

Wallace Stenger, as usual, caught the spirit in that wonderful essay he wrote in 1960. He said, ''We need this wild country even if we do no more than go to the edge and look in. We need it as a symbol of our sanity as creatures as part of the geography of hope.'' And Ansel Adams, the great photographer said it in a different way, and I once said, ''Ansel, can I apply your statement to the Grand Canyon and Yosemite?'' ''Of course,'' he said Ansel was writing home after his first trip to New Mexico and he used these words: All is very beautiful and magical here. He is talking about the landscape. ''All is beautiful and magical here.'' A quality one cannot describe. He said, ''The sky and the land is so enormous and that the detail is so precise and exquisite,'' the eye of the photographer—''that wherever you are, there is a golden glow and everything is sideways under you and over you, and the clocks stopped long ago.''

Keep up the fight, and good night.

Mrs. FEINSTEIN. Mr. President, this month our Nation celebrates the 40th anniversary of the Wilderness Act. To commemorate the anniversary of this landmark legislation, I want to take a few moments to highlight the historic importance of this law, and remind us of some of the work remaining to be done.

When President Lyndon B. Johnson signed the Wilderness Act into law on September 3, 1964, it became our unambiguous national policy ''to secure for the American people of present and future generations the benefits of an enduring resource of wilderness.''

The legislation empowered those of us in Congress, with the ultimate approval of the President, to designate Federal lands for protection as part of our national wilderness preservation system. It was a tremendous accomplishment, immediately placing some 1.2 million acres of wilderness in 13 areas on national forest lands throughout my home State of California under statutory protection. And it protected another 8 million acres of land in other States.

But that was only the start. Over the ensuing four decades, Californians have welcomed acts of Congress that have expanded most of those initial areas. Today, those original 13 wilderness areas have grown to 1.7 million acres of wilderness firmly protected by statute.

The Wilderness Act also required that numerous other areas of Federal land be studied, with local public hearings, leading to Presidential recommendations for additional wilderness areas. Congress has enacted those proposals in California, beginning with the great San Rafael Wilderness near Santa Barbara in 1969—the first area added to the national wilderness system after the Wilderness Act became law.

Another early study focused on the 50,000-acre Ventana Primitive Area in the mountains along the central California coast above Big Sur—an area the U.S. Forest Service preserved in the 1930s. The study led Congress to establish the 98,000-acre Ventana Wilderness in 1969, with the leadership, among others, of California Senator Thomas Kuchel.

Since that time we have revisited this area in four additional laws, most recently when we passed and President George W. Bush signed a law in late 2002 further expanding this wilderness. As a result, the Ventana Wilderness now covers 240,000 acres.

Beyond the original Wilderness Act study areas, our California delegation has listened carefully to the diverse voices of the people of California. Year after year, we receive proposals for wilderness protection that come to us from ordinary citizens and organizations in our State, most often working in close consultation with the Federal land managing agencies involved and our State government.

Many of these proposals have been enacted, particularly for lands administered by the U.S. Forest Service and the Bureau of Land Management. As a result of all this work, California now boasts 130 wilderness areas comprising 14 million acres.

These California wilderness areas offer a diverse spectrum of landscapes and ecosystems, recreational opportunities and scenic vistas, from the high peaks and forested valleys of the Sierra, to the extraordinarily wild deserts that Senator Alan Cranston and I fought to protect in the California Desert Protection Act of 1994—one of my proudest achievements for the people of California.

In celebrating the 40th anniversary of the Wilderness Act, I particularly stress that the work of preserving California's wilderness heritage has always been a bipartisan endeavor. In our State, we enjoy wilderness areas found in the congressional districts of both Democrats and Republicans, protected in laws signed by every President since this program began 40 years ago—Presidents Lyndon Johnson, Richard Nixon, Gerald Ford, Jimmy Carter, Ronald Reagan, George H.W. Bush, Bill Clinton, and George W. Bush.

The act itself became law after 8 years of congressional debate. Endorsed by the Eisenhower administration and the administrations of Presidents John F. Kennedy and Lyndon B. Johnson, the act was shaped by practical-minded people, mostly westerners. It is, as Senator Kuchel said during those Senate debates, ''reasonable . . . not extreme in any degree.''

Senator Kuchel insisted that the law not conflict with State water rights and that the act respect existing mining claims and established grazing uses. At the same time, Senator Kuchel reminded his colleagues that protecting wilderness watersheds is key to abundant, clean water supplies—the lifeblood of California's ranching and agricultural sector, our thriving cities and towns, and the economic well-being of our entire Nation.

Still, there is more wilderness to be protected and more work to be done. These days, Federal lands that deserve a fair look by Congress are, in some cases, under threat from other kinds of use that are inconsistent with the preservation of wilderness. This is the kind of careful balancing Congress undertakes as we make these decisions.

This Congress has a great opportunity to preserve even more stunning wilderness by completing action on the Northern California Coastal Wild Heritage Wilderness Act that I have cosponsored with my colleague Senator BARBARA BOXER. This bill has the strong and effective support of Representative MIKE THOMPSON, in whose district every acre of its proposed wilderness areas is situated, and the support of numerous cosponsors, including California Representatives from both sides of the aisle.

Among the 300,000 acres this priority bill would protect is the 42,000-acre King Range Wilderness, a wild expanse on our California ''lost coast'' south of Eureka. Many of the proposals in this bill are based on agency recommendations or proposals by local citizens like the Humboldt County nurse who has been working to save the King Range for 20 years. These areas enjoy strong support, as wilderness, from local business owners in the area, from hunting and fishing enthusiasts, from dedicated backpackers to young parents hiking or backpacking to introduce their children or their grandchildren to nature at its most wild.

Similarly worthy, bipartisan proposals await action for wilderness sponsored by our colleagues from New Mexico and Washington. And no less worthy is the proposed wilderness area designation for an area on the Caribbean National Forest in Puerto Rico—a wilderness area proposed by the U.S. Forest Service more than three decades ago.

As we consider these wilderness proposals, we can generally rely upon existing standards and interpretations of the Wilderness Act. Thanks to our predecessors we have a wealth of guidance in the legislative history of the Wilderness Act and the more than 100 laws Congress has enacted since to protect additional lands.

Now, as we celebrate the 40th year of the Wilderness Act, the preservation of our wilderness has never been more important. Population growth, especially in the Western United States, is placing increased pressure on our public lands. That is why it was so critical that our leaders acted 40 years ago and why it is urgent that we continue to preserve our Nation's natural treasures today.

John Muir once said, ''Everybody needs beauty as well as bread, places to play in and pray in, where nature may heal and give strength to body and soul alike.''

For 40 years, the Wilderness Act has entrusted Congress and the American people with the means to preserve that beauty.

## NOTICE OF CHANGE IN SENATE SERVICE PIN REGULATIONS

Mr. LOTT. Mr. President, I wish to announce that in accordance with Title V of the Rules of Procedure of the Senate Committee on Rules and Administration, the committee has updated the Senate Service Pin regulations effective September 22, 2004.

Based on the committee's review of the 1987 regulations which authorize the issuance of a staff service pin when a Senate staff member has served 12 years in the Senate, the Committee has concluded that service pins should be awarded to staff members who have served 20 years in the Senate and to those staff members who have served for 30 years.

Regulations adopted by the Committee on Rules and Administration on September 22, 2004, to replace similar regulations approved by the Committee on September 23, 1987, pursuant to S. Res. 21, agreed to September 10, 1965, relative to the awarding of service pins to Members, officers, and employees of the Senate:

1. Service pins of the material and design suggested by the Secretary of the Senate and approved by the leadership of the Senate and the Committee on Rules and Administration, together with appropriate Certificates of service signed by the Secretary of the Senate, shall be procured and awarded by the Secretary of the Senate.

2. Each Member of the Senate and each elected officer of the Senate shall receive his/her pin and certificate upon taking office.

3. Each employee of the Senate shall receive a pin and certificate after the completion of 12, 20, and 30 years on the Senate payroll.

4. Senate service shall be limited to all service—whether continuous or not—performed while on the Senate payroll.

5. Former employees of the Senate are not covered unless they were on the Senate payroll on or after September 22, 2004, and were otherwise qualified.

6. After the initial award of pins and certificates, the Secretary of the Senate shall arrange for presentation of subsequent awards to those who qualify pursuant to the pertinent provisions of this regulation.

7. Each individual who qualifies will receive a pin and certificate and no additional pins will be subsequently awarded to such individuals for more than 30 years of Senate service, except that appropriate date plates and/or seals may be presented by the Secretary of the Senate at termination of service.

## NATIONAL HISPANIC HERITAGE WEEK

Mr. JOHNSON. Mr. President, I today publicly recognize the importance of National Hispanic Heritage Month. This 30-day observance begins September 15th, the independence day of five Latin American countries, Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua, and includes Mexico's Independence Day, September 16, as well as Chile's day of Independence, September 18.

Despite that Hispanic Americans have played important roles in our great nation for the last five centuries, it wasn't until the 1960s that this legislative body officially honored the Hispanic ethnic legacy. In 1968 Congress voted to name the week including September 15 and 16 National Hispanic Heritage Week, and in 1988 Congress passed Public Law 100–402, expanding National Hispanic Heritage Week to a 30-day celebration.

Hispanic individuals have made immeasurable contributions to America in many fields. Dr. Severo Ochoa discovered RNA, Ribonucleic acid, and as a result won the Nobel Prize and set the foundations of many of today's medical technologies. Cesar Chaves made great strides in worker's rights, and more than three dozen Hispanic Americans have been awarded the Medal of Honor for their military service to our country.

America, the great melting pot, has always taken pride in her diversity. Over 10,000 of my constituents are of Hispanic origin, and approximately 40 million Hispanics call America home, making them the United States' largest minority group. It is with great honor that I bring attention to National Hispanic Heritage Month and the contributions of the Hispanic people.

## SPECIAL OLYMPICS SPORT AND EMPOWERMENT ACT OF 2004

Mr. BURNS. Mr. President, I rise to speak on the Special Olympics and Empowerment Act of 2004. I am proud to be an original cosponsor of this legislation which will create a multi-million dollar authorization, over 5 years, for the Special Olympics. This crucial funding will expand the scope of the Special Olympics by offering more children and adults with disabilities the opportunity to join in the life-changing events of the Special Olympics program.

The oath of the Special Olympics is ''Let me win. But if I cannot win, let me be brave in the attempt.'' This mission of this program certainly rings true to the spirit of America and beyond. More than one million athletes and 500,000 volunteers participate in Special Olympics world-wide. Also, in my State of Montana, the Special Olympics signifies a real success: during the last year over 2,000 Special Olympics athletes participated and they could choose from as many as fourteen Olympic-style sports.

It is important to me that Montanans with developmental and intellectual disabilities have access to recreational opportunities that will not only improve their health and well-being, but also promote mental and emotional strength. I encourage my colleagues to join me in supporting the Special Olympics.

## ADDITIONAL STATEMENTS

### HONORING THE ACCOMPLISHMENTS OF BEN WOODMAN

● Mr. BUNNING. Mr. President, I pay tribute to and congratulate Ben Woodman of Berea, KY on being awarded a Boren Undergraduate Scholarship from the David L. Boren National Security Education Program, NSEP.

Mr. Woodman was one of 181 applicants nationwide to receive one of these scholarships. NSEP is administered within the National Defense University in the Department of Defense. It funds outstanding U.S. students to study critical languages and world regions in exchange for a commitment to seek employment with the Federal Government in the arena of national security.

Mr. Woodman has been studying Arabic and will spend the year in Egypt. He attends the University of Kentucky and is majoring in international economics and Arabic.

The citizens of Madison County should be proud to have a man like Ben Woodman in their community. His example of dedication and hard work should be an inspiration to the entire Commonwealth. He has my most sincere admiration for this work and I look forward to his continued service to the United States.●

### TRIBUTE TO ANTOINE PETTWAY

● Mr. SESSIONS. Mr. President, I wish to recognize the achievements of Antoine Pettway on the occasion of his being honored by his high school, Wilcox Central High School, in Camden, AL. During ceremonies for Mr. Pettway, the Mayor of Camden, Henrietta Blackmon, presented him with a key to the city and a series of speakers praised their native son for his skills on the basketball court and for his

strengths as a person. I have watched his career unfold with special interest because I too went to school in the small town of Camden. While the community is not a wealthy one, it has produced many outstanding young people, and Antoine is one of the most noteworthy.

Antoine Pettway was born on November 13, 1982, to Joseph Pettway and Linda Crawford. Growing up in the small, rural town of Alberta, AL, Antoine ate, slept, and breathed basketball, when he was not working on his father's cattle farm or in his grandfather's country store. Pettway was a high school basketball standout averaging 24.3 points, 5.2 rebounds, and 6.7 assists, per game. Subsequently, with his athletic skills and strong leadership on and off the court, Antoine was able to help clinch State championship titles in 1998 for Keith High School, and in 2000 for Wilcox Central High School. Antoine was not only known for his athletic success, but also his academic success. He was a 4.0 student in high school and Salutatorian of his graduating class.

Pettway received athletic scholarships from Jacksonville State, Louisiana Tech, Alabama State, and Alabama A&M, but his heart belonged to the University of Alabama. Standing at only 6 feet, he was not noticed by the Tide's coach, Mark Gottfried, until the State tournament and after all scholarship positions had been filled for the upcoming season. However, Antoine was approached by Coach Gottfried and asked to walk on as a freshman. So, with the help of his father and an academic scholarship, Antoine Pettway entered the University of Alabama in the fall of 2000 and joined the Crimson Tide basketball team as a walk-on for the 2000–2001 season.

Antoine, determined to prove to Coach Gottfried that he belonged, averaged 2.9 points, 1.6 assists, and 1.1 rebounds per game during the 29 games he played his freshman year. His best game was a stand-out performance at Ole Miss in which he scored 19 points. His energy and skills on the court earned Pettway a scholarship in July of 2002.

During his sophomore year, Antoine became a well-recognized figure on the Crimson Tide's basketball team not only for his charisma and athletic ability, but also his bright red, shiny sneakers. They became his trademark. His ''ruby slippers'' earned him fame around the country, but he is probably most remembered that year for his layup at the buzzer that gave Alabama a 65–64 victory over Florida, clinching the Tide's first Southeastern Conference title since 1987.

In the 2002–2003 season, Pettway started 10 games and averaged 6.3 points, 2.5 rebounds, and 2.4 assists per game. He was ranked 7th in the SEC in assists to turnover ratio and shot 81.8 percent from the free throw line, making 36 of 44. His hard work and awesome talent was recognized by the basketball community when he was awarded the MVP of the Basketball Hall of Fame Tipoff Classic.

Antoine remained the heart and soul of the Crimson Tide's basketball team through his senior year and led his team to the Elite Eight of the NCAA Tournament, a plateau that Alabama basketball had never reached before. He was the starting point guard and averaged 9.38 points, 3.62 rebounds, and 3.31 assists per game.

Antoine's dedication and extraordinary work ethic can be seen not only on the basketball court, but also in the classroom. In his senior year, he was named Academic All-Southeastern Conference. To make the honor roll, an athlete must be a sophomore or higher in academic standing and have a 3.0 (on a 4.0 scale) or higher grade point average. He graduated from the University of Alabama in May of 2004 with a degree in Health Care Management.

Most recently, Antoine Pettway was selected as the World Basketball Association's ''Rookie of the Year'' and was named to the 2nd Team All-WBA All-Star Team. He helped lead his team, the Kentucky Reach, the first Christian-based professional basketball team, to an 11–9 record and averaged 4.6 assists and 12.7 points per game. He is ranked second in the league in assists and 14th in scoring.

The people of Camden and Wilcox county are proud of his basketball success, and they are even more proud of his leadership, his academic achievements, and his character. Indeed, Antoine Pettway's accomplishments on and off the court have inspired young and old to strive for excellence. He has high ideals and is true to his faith. The people of the State of Alabama are proud to call him their native son, and I wish him best of luck with his future endeavors. Whatever the future holds for this Wilcox County native son, it will be bright because he has his priorities straight.

I am proud to recognize the accomplishments of a great American and Alabamian, and a wonderful representative of Wilcox County, Antoine Pettway.●

## COMMEMORATING THE 100TH ANNIVERSARY OF THE POLISH DAILY NEWS

● Mr. LEVIN. Mr. President, I am honored to recognize Dziennik Polski, or the Polish Daily News, one of Michigan's oldest and honored publications, on its 100th anniversary. The Polish Daily News can be proud of its dedication to generations of Polish Americans and its support of American traditions and ideals. The Polish Daily News has worked together with other organizations in the greater Detroit area to help build strong and effective communities, which has given rise to a diverse and vibrant socioeconomic region in southeast Michigan.

Founded in 1904 by a small group of community members, the Polish Daily News was housed in a building on the south side of Canfield east of Riopelle. This was home to the paper until the 1960s when the offices and print production moved to a location on Van Dyke in Detroit. A third and fourth move relocated the newspaper to two addresses on Joseph Campau, with the last one in Hamtramck. As Detroit's primary Polish newspaper serving the new immigrants who began to settle in what was becoming the Nation's Motor City, the Polish Daily News played a vital role in building a strong Polonia that was committed to full participation in American life. The paper supported a cohesive community that encouraged its members to strive for accomplishments that reflected their shared values of a deep commitment to family, faith, hard work, as well as the American ideals of democracy and freedom. With a circulation of 30,000 during the 1940s and 1950s, the Polish Daily News kept its readership informed about the struggle for Poland's independence from Soviet oppression while advocating for a future democratic Poland and strong U.S.-Poland relations.

Today as the Polish Weekly, the newspaper continues the heritage of promoting both a strong Polonia and citizen participation in the life of the United States. The Polish Daily News is celebrating its 100th anniversary of serving the Polish-American community of greater Detroit on Saturday, October 2, 2004. Families, friends, community leaders, and elected officials will gather at the American Polish Cultural Center in Troy to pay tribute to the important efforts of the Polish Daily News organization which has helped to promote community life and strengthen Polish-American pride throughout the 100 years of its existence.

I know my Senate colleagues join me in also congratulating publisher Bruno Nowicki and the editors and staff, along with the community supporters and many friends of the Polish Daily News/Polish Weekly on this great milestone. I am proud to recognize their record of service to the Polish-American community and their respected standing among all the people of Michigan. A Hearty Sto Lat—Another 100 Years.●

## REMEMBERING ED HENNESSEE FROM LAWTON, OK

● Mr. INHOFE. Mr. President, earlier today, my State of Oklahoma, as well as the Nation, lost a true friend of education.

Ed Hennessee, a longtime resident of Lawton, OK died doing what he loved best—advocating for children attending federally connected school districts.

Ed served the Lawton Public Schools in a variety of capacities for many years retiring as assistant superintendent for business in 1995.

While in that capacity he fought for a program that I have come to champion—Impact Aid.

The program's origin was rooted in Oklahoma in the late 1940s and early 1950s, when Oscar Rose, superintendent of the Mid-Del Schools and others convinced Congress that the Federal Government had a responsibility and an obligation to provide assistance to school districts serving children whose parents were employed by the Federal Government or the military. Ed Hennessee continued that legacy right up to the time of his death this morning.

During his long education career, Ed received many honors, including being named the State of Oklahoma Teacher of the Year.

However, he was most proud of the fact that he was helping children.

He truly understood that education is about giving children an opportunity to be successful. One of his most frequent statements was ''Teach a child to love to learn, then you will be successful teaching them any school subject.'' Ed was a success because he loved learning.

He also loved helping others have the opportunity to learn, and, thankfully, he taught many the importance of using their gifts and talents to help our children. Although he retired from the Lawton Public Schools in the mid-1990s, he continued serving federally connected schools. As executive director of the National Council of Impacted Schools, he continued to work for both Oklahoma federally connected schools, along with other schools throughout the nation.

He visited my office at least twice a year to talk about ways to improve the program. He was an expert on the intricacies of the often complex and confusing details of Impact Aid and freely offered that expertise. When my staff or I needed information about how schools in Oklahoma and around the country would be affected by the level of funding appropriated for Impact Aid, Ed knew the answers. He was an innovator for Impact Aid.

For example, S. 777 was a bill I developed from one of his ideas. Ed was in Washington this weekend to advocate for the Impact Aid program when he became ill. He was doing what he had been doing for more than a quarter of a century—- asking Congress to fulfill its obligation to school districts all across this country that are impacted by a federal presence.

Prior to Ed's retirement, he served on the Board of Directors of the National Association of Federally Impacted Schools and served as its President from 1991 to 1993. He never stopped putting the needs of federally connected students at the top of his priority list. His presence will indeed be missed—not only by those who knew him well, such as his dear wife Edna who was always by his side—but also by those who enjoy the fruits of his labor.●

## IN RECOGNITION OF HIS EXCELLENCY H.E. BADER OMAR AL-DAFA, AMBASSADOR OF QATAR TO THE UNITED STATES

● Mr. LEVIN. Mr. President, I take this opportunity to recognize Ambassador H.E. Bader Omar Al-Dafa, a distinguished career diplomat and the current Ambassador of Qatar to the United States. Ambassador Al-Dafa, who earned his bachelor's degree in political science from Western Michigan University in 1975, will receive the College of Arts and Sciences Alumni Achievement Award from Western Michigan University in a special ceremony on October 15, 2004.

Ambassador Al-Dafa is admired in Michigan for his dedication to service and his work in promoting US-Arab relations. His efforts to foster better understanding among America, Qatar and the Arab world through support of important initiatives in the American Arab community are appreciated by many. His respect for diplomacy has been demonstrated throughout his exemplary career which spans more than 25 years.

Upon graduation from Western Michigan University, Ambassador Al-Dafa began his career as a diplomatic attaché at the Ministry of Foreign Affairs, Doha. While serving in his second assignment as First Secretary at the Embassy of the State of Qatar in Washington, DC, he earned a master's degree in international public policy from the School of Advanced International Studies at Johns Hopkins University in 1979. With his solid understanding of America and its people, Ambassador Al-Dafa has been energetic and consistent in his commitment to improving bilateral relations.

Ambassador Al-Dafa has served in his post as Ambassador of Qatar to the United States since September 5, 2000. Prior to this assignment, he served as Non-Resident Ambassador to Mexico; Director of European and American Affairs Department, Ministry of Foreign Affairs in Qatar; Ambassador to The Russian Federation; Non Resident Ambassador to Finland, Latvia, Lithuania, Estonia; Ambassador to France and Non Resident Ambassador to Greece; Non-Resident Ambassador to Switzerland; Ambassador to Egypt and Permanent Representative to the Arab League in Cairo, Egypt; and Ambassador to Spain. Through the Washington Embassy, Ambassador Al-Dafa has worked on a wide array of programs, including the establishment of branches of Virginia Commonwealth University, Texas A&M, and Weill Cornell Medical College in Education City in Doha. In addition to Arabic and English, he speaks Spanish and French fluently. Ambassador Al-Dafa is married to Awatef Mohamed Al-Dafa and has three children.

I know my colleagues join me in congratulating Ambassador Al-Dafa on his success and achievements in international affairs and on this prestigious honor that will be conferred by Western Michigan University. I am pleased to offer my best wishes on his continued service and contribution to the close ties and good relations between the State of Qatar and the United States.●

## MESSAGES FROM THE HOUSE

### ENROLLED BILLS SIGNED

At 10:33 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bills and joint resolution:

S.J. Res. 41. Joint resolution commemorating the opening of the National Museum of the American Indian.

H.R. 1308. An act to amend the Internal Revenue Code of 1986 to provide tax relief for working families, and for other purposes.

H.R. 3389. An act to amend the Stevenson-Wydler Technology Innovation Act of 1980 to permit Malcolm Baldrige National Quality Awards to be made to nonprofit organizations.

The enrolled bills and joint resolution were signed subsequently by the President pro tempore (Mr. STEVENS).

At 1:52 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, with an amendment:

S. 643. An act to authorize the Secretary of the Interior, in cooperation with the University of New Mexico, to construct and occupy a portion of the Hibben Center for Archaeological Research at the University of New Mexico, and for other purposes.

The message also announced that pursuant to the request of September 14, 2004, the House returned the act (S. 2261) to expand certain preferential trade treatment for Haiti to the Senate.

The message further announced that the House disagrees to the amendment of the Senate to the bill (H.R. 4200) to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year for Armed Forces, and for other purposes, and agrees to the conference asked by Senate on the disagreeing votes of the two Houses thereon; and appoints the following members as the managers of the conference on the part of the House:

From the Committee on Armed Services, for consideration of the House bill and the Senate amendment, and modifications committed to conference: Messrs. HUNTER, WELDON of Pennsylvania, HEFLEY, SAXTON, MCHUGH, EVERETT, BARTLETT of Maryland, MCKEON, THORNBERRY, HOSTETTLER, JONES of North Carolina, RYUN of Kansas, GIBBONS, HAYES, Mrs. WILSON of New Mexico, Messrs. CALVERT, SIMMONS, SKELTON, SPRATT, ORTIZ, EVANS, TAYLOR of Mississippi, ABERCROMBIE, MEEHAN, REYES, SNYDER, TURNER of

Texas, SMITH of Washington, Ms. LORETTA SANCHEZ of California, and Mr. HILL.

From the Permanent Select Committee on Intelligence, for consideration of matters within the jurisdiction of that committee under clause 11 of rule X: Messrs. HOEKSTRA, LAHOOD, and Ms. HARMAN.

From the Committee on Agriculture, for consideration of section 1076 of the Senate amendment, and modifications committed to conference: Messrs. GOODLATTE, BURNS, and STENHOLM.

From the Committee on Education and the Workforce, for consideration of sections 590, 595, 596, 904, and 3135 of the House bill, and sections 351, 352, 532, 533, 707, 868, 1079, 3143, and 3151–3157 of the Senate amendment, and modifications committed to conference: Messrs. CASTLE, SAM JOHNSON of Texas, and BISHOP of New York.

From the Committee on Energy and Commerce, for consideration of sections 596, 601, 3111, 3131, 3133, and 3201 of the House bill, and sections 321–323, 716, 720, 1084–1089, 1091, 2833, 3116, 3119, 3141, 3142, 3145, 3201, and 3503 of the Senate amendment, and modifications committed to conference: Messrs. BARTON of Texas, UPTON, and DINGELL.

From the Committee on Government Reform, for consideration of sections 801, 806, 807, 825, 1061, 1101–1104, 2833, 2842, 2843 of the House bill, and sections 801, 805, 832, 851, 852, 869, 870, 1034, 1059B, 1091, 1101, 1103–1107, 1110, 2823, 2824, 2833, and 3121 of the Senate amendment, and modifications committed to conference: Messrs. TOM DAVIS of Virginia, SHAYS, and WAXMAN.

From the Committee on House Administration, for consideration of sections 572 and 1065 of the Senate amendment, and modifications committed to conference: Messrs. NEY, EHLERS, and LARSON of Connecticut.

From the Committee on International Relations, for consideration of sections 811, 1013, 1031, 1212, 1215, title XIII, sections 1401–1405, 1411, 1412, 1421, and 1422 of the House bill, and sections 1014, 1051–1053, 1058, 1059A, 1059B, 1070, title XII, sections 3131 and 3132 of the Senate amendment, and modifications committed to conference: Messrs. HYDE, LEACH, and LANTOS.

From the Committee on the Judiciary, for consideration of sections 551, 573, 616, 652, 825, 1075, 1078, 1105, 2833, 2842, and 2843 of the House bill, and sections 620, 842, 1063, 1068, 1074, 1080–1082, 1101, 1106, 1107, 2821, 2823, 2824, 3143, 3146, 3151–3157, 3401–3410 of the Senate amendment, and modifications committed to conference: Messrs. SENSENBRENNER, SMITH of Texas, and CONYERS.

From the Committee on Resources, for consideration of sections 601 and 2834 of the House bill, and section 1076 of the Senate amendment, and modifications committed to conference: Messrs. POMBO, WALDEN of Oregon, and INSLEE.

From the Committee on Science, for consideration of section 596 of the House bill, and sections 1034, 1092, and title XXXV of the Senate amendment, and modifications committed to conference: Messrs. BOEHLERT, SMITH of Michigan, and GORDON.

From the Committee on Small Business, for consideration of sections 807 and 3601 of the House bill, and sections 805, 822, 823, 912, and 1083 of the Senate amendment, and modifications committed to conference: Mr. MANZULLO, Mrs. KELLY, and Ms. VELÁZQUEZ.

From the Committee on Transportation and Infrastructure, for consideration of sections 555, 558, 596, 601, 905, 1051, 1063, 1072, and 3502 of the House bill, and sections 321, 323, 325, 717, 1066, 1076, 1091, 2828, 2833–2836, and title XXXV of the Senate amendment, and modifications committed to conference: Messrs. YOUNG of Alaska, DUNCAN, and CAPUANO.

From the Committee on Veterans Affairs, for consideration of sections 2810 and 2831 of the House bill, and sections 642, 2821, and 2823 of the Senate amendment, and modifications committed to conference: Messrs. SMITH of New Jersey, BROWN of South Carolina, and MICHAUD.

From the Committee on Ways and Means, for consideration of section 585 of the House bill, and section 653 of the Senate amendment, and modifications committed to conference: Messrs. SHAW, CAMP, and RANGEL.

The message also announced that the House has passed the following bill, without amendment:

S. 1537. An act to direct the Secretary of Agriculture to convey to the New Hope Cemetery Association certain land in the State of Arkansas for use as a cemetery.

S. 1687. An act to direct the Secretary of the Interior to conduct a study on the preservation and interpretation of the historic sites of the Manhattan Project for potential inclusion in the National Park System.

S. 1778. An act to authorize a land conveyance between the United States and the City of Craig, Alaska, and for other purposes.

S. 2052. An act to amend the National Trails System Act to designate El Camino Real de los Tejas as a National Historic Trail.

S. 2180. An act to direct the Secretary of Agriculture to exchange certain lands in the Arapaho and Roosevelt National Forests in the State of Colorado.

S. 2363. An act to revise and extend the Boys and Girls Clubs of America.

S. 2508. An act to redesignate the Ridges Basin Reservoir, Colorado, as Lake Nighthorse.

The message further announced that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 2941. An act to correct the south boundary of the Colorado River Indian Reservation in Arizona, and for other purposes.

H.R. 3210. An act to authorize the Secretary of the Interior, acting through the Bureau of Reclamation, to conduct a water resource feasibility study for the Little Butte Bear Creek Subbasins in Oregon.

H.R. 3247. An act to provide consistent enforcement authority to the Bureau of Land Management, the National Park Service, the United States Fish and Wildlife Service, and the Forest Service to respond to violations of regulations regarding the management, use, and protection of public lands under the jurisdiction of these agencies, to clarify the purposes for which collected fines may be used, and for other purposes.

H.R. 3479. An act to provide for the control and eradication of the brown tree snake on the island of Guam and the prevention of the introduction of the brown tree snake to other areas of the United States, and for other purposes.

H.R. 3597. An act to authorize the Secretary of the Interior, through the Bureau of Reclamation, to conduct a feasibility study on the Alder Creek water storage and conservation project in El Dorado County, California, and for other purposes.

H.R. 3954. An act to authorize the Secretary of the Interior to resolve boundary discrepancies in San Diego County, California, arising from an erroneous survey conducted by a government contractor in 1881 that resulted in overlapping boundaries for certain lands, and for other purposes.

H.R. 4046. An act to designate the facility of the United States Postal Service located at 555 West 180th Street in New York, New York, as the ''Sergeant Riayan A. Tejada Post Office''.

H.R. 4066. An act to provide for the conveyance of certain land to the United States and to revise the boundary of Chickasaw National Recreation Area, Oklahoma, and for other purposes.

H.R. 4077. An act to enhance criminal enforcement of the copyright laws, to educate the public about the application of copyright law to the Internet, and for other purposes.

H.R. 4319. An act to complete the codification of title 46, United States Code, ''Shipping,'' as positive law.

H.R. 4469. An act to authorize appropriations to the Secretary of the Interior for the restoration of the Angel Island Immigration Station in the State of California.

H.R. 4579. An act to modify the boundary of the Harry S Truman National Historic Site in the State of Missouri, and for other purposes.

H.R. 4596. An act to amend Public Law 97–435 to extend the authorization for the Secretary of the Interior to release certain conditions contained in a patent concerning certain land conveyed by the United States to Eastern Washington University until December 31, 2009.

H.R. 4606. An act to authorize the Secretary of the Interior, acting through the Bureau of Reclamation and in coordination with other Federal, State, and local government agencies, to participate in the funding and implementation of a balanced, long-term groundwater remediation program in California, and for other purposes.

H.R. 4617. An act to authorize the Secretary of Agriculture to carry out certain land exchanges involving small parcels of National Forest System land in the Tahoe National Forest in the State of California, and for other purposes.

H.R. 4657. An act to amend the Balanced Budget Act of 1997 to improve the administration of Federal pension benefit payments for District of Columbia teachers, police officers, and fire fighters, and for other purposes.

H.R. 4683. An act to enhance the preservation and interpretation of the Gullah Geechee cultural heritage, and for other purposes.

H.R. 4808. An act to provide for a land exchange involving private land and Bureau of Land Management land in the vicinity of Holloman Air Force Base, New Mexico, for the purpose of removing private land from the required safety zone surrounding munitions storage bunkers at Holloman Air Force Base.

H.R. 4827. An act to amend the Colorado Canyons National Conservation Area and

Black Ridge Canyons Wilderness Act of 2000 to rename the Colorado Canyons National Conservation Area as the McInnis Canyons National Conservation Area.

H.R. 4838. An act to establish a Healthy Forest Youth Conservation Corps to provide a means by which young adults can carry out rehabilitation and enhancement projects to prevent fire and suppress fires, rehabilitate public land affected or altered by fires, and provide disaster relief, and for other purposes.

H.R. 5009. An act to extend water contracts between the United States and specific irrigation districts and the City of Helena in Montana, and for other purposes.

H.R. 5016. An act to extend the water service contract for the Ainsworth Unit, Sandhills Division, Pick-Sloan Missouri Basin Program, Nebraska.

H.R. 5025. An act making appropriations for the Department of Transportation and Treasury, and independent agencies for the fiscal year ending September 30, 2005, and for other purposes.

H.R. 5027. An act to designate the facility of the United States Postal Service located at 411 Midway Avenue in Mascotte, Florida, as the ''Specialist Eric Ramirez Post Office''.

H.R. 5133. An act to designate the facility of the United States Postal Service located at 11110 Sunset Hills Road in Reston, Virginia, as the ''Martha Pennino Post Office Building.''

H.R. 5147. An act to designate the facility of the United States Postal Service located at 23055 Sherman Way in West Hills, California, as the ''Evan Asa Ashcraft Post Office Building''.

H.J. Res. 102. Joint resolution recognizing the 60th anniversary of the Battle of Peleliu and the end of Imperial Japanese control of Palau during World War II and urging the Secretary of the Interior to work to protect the historic sites of the Peleliu Battlefield National Historic Landmark and to establish commemorative programs honoring the Americans who fought there.

The message further announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 461. Concurrent resolution expressing the sense of Congress regarding the importance of life insurance, and recognizing and supporting National Life Insurance Awareness Month.

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At 3:56 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 480. An act to redesignate the facility of the United States Postal Service located at 747 Broadway in Albany, New York, as the ''United States Postal Service Henry Johnson Annex''.

H.R. 5122. An act to amend the Congressional Accountability Act of 1995 to permit members of the Board of Directors of the Office of Compliance to serve for 2 terms.

The message also announced that the House has agreed to the following concurrent resolution with an amendment.

S. Con. Res. 135. Concurrent resolution authorizing the printing of a commemorative document in memory of the late President of the United States, Ronald Wilson Reagan.

At 4:32 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following joint resolution, in which it requests the concurrence of the Senate:

H.J. Res. 107. Joint resolution making continuing appropriations for the fiscal year 2005, and for other purposes.

## MEASURES PLACED ON THE CALENDAR

The following bills were read the second time, and placed on the calendar:

H.R. 1084. An act to provide liability protection to nonprofit volunteer pilot organizations flying for public benefit and to the pilots and staff of such organizations.

H.R. 1787. An act to remove civil liability barriers that discourage the donation of fire equipment to volunteer fire companies.

S. 2852. A bill to provide assistance to Special Olympics to support expansion of Special Olympics and development of education programs and a Healthy Athletes Program, and for other purposes.

The following bills were read the first and second times by unanimous consent, and placed on the calendar:

H.R. 5025. An act making appropriations for the Departments of Transportation and Treasury, and independent agencies for the fiscal year ending September 30, 2005, and for other purposes.

H.R. 4066. An act to provide for the conveyance of certain land to the United States and to revise the boundary of Chickasaw National Recreation Area, Oklahoma, and for other purposes.

## MEASURES READ THE FIRST TIME

The following bill was read the first time:

S. 2866. A bill to amend the Farm Security and Rural Investment Act of 2002 to clarify the authority of the Secretary of Agriculture and the commodity Credit Corporation to enter into memorandums of understanding with a State regarding the collection of approved State commodity assessments on behalf of the State from the proceeds of marketing assistance loans.

## ENROLLED JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on today, September 29, 2004, she had presented to the President of the United States the following enrolled joint resolution:

S.J. Res. 41. Joint resolution commemorating the opening of the National Museum of the American Indian.

## EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–9492. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Columbus, NE Doc. No. 04–ACE–42'' (RIN2120–AA66) received on September 28, 2004; to the Committee on Commerce, Science, and Transportation.

EC–9493. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Urbana, OH Doc. No. 04–AGL–01'' (RIN2120–AA66) received on September 28, 2004; to the Committee on Commerce, Science, and Transportation.

EC–9494. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Georgetown, OH Doc. No. 04–AGL–02'' (RIN2120–AA66) received on September 28, 2004; to the Committee on Commerce, Science, and Transportation.

EC–9495. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Janesville, WI Doc. No. 04–AGL–07'' (RIN2120–AA66) received on September 28, 2004; to the Committee on Commerce, Science, and Transportation.

EC–9496. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Kalamazoo, MI Doc. No. 04–AGL–04'' (RIN2120–AA66) received on September 28, 2004; to the Committee on Commerce, Science, and Transportation.

EC–9497. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; South Haven, MI Doc. No. 04–AGL–05'' (RIN2120–AA66) received on September 28, 2004; to the Committee on Commerce, Science, and Transportation.

EC–9498. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class D Airspace; Rochester, MN; Modification of Class E Airspace; Rochester, MN Doc. No. 04–AGL–10'' (RIN2120–AA66) received on September 28, 2004; to the Committee on Commerce, Science, and Transportation.

EC–9499. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class D Airspace; Camp Douglas, WI Doc. No. 04–AGL–08'' (RIN2120–AA66) received on September 28, 2004; to the Committee on Commerce, Science, and Transportation.

EC–9500. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class D Airspace; Mount Clemens, MI Doc. No. 03–AGL–20'' (RIN2120–AA66) received on September 28, 2004; to the Committee on Commerce, Science, and Transportation.

EC–9501. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; King Salmon, AK Doc. No. 03–AAL–09'' (RIN2120–AA66) received on September 28, 2004; to the Committee on Commerce, Science, and Transportation.

EC–9502. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule

entitled ''Establishment of Class E Airspace; Shungnak, AK Doc. No. 04–AAL–08'' (RIN2120–AA66) received on September 28, 2004; to the Committee on Commerce, Science, and Transportation.

EC–9503. A communication from the Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law , the report of a rule entitled ''Indiana Regulatory Program'' (IN–154–FOR) received on September 28, 2004; to the Committee on Energy and Natural Resources.

EC–9504. A communication from the Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law , the report of a rule entitled ''Ohio Regulatory Program'' (OH–248–FOR) received on September 28, 2004; to the Committee on Energy and Natural Resources.

EC–9505. A communication from the Director, Office of Human Resources, Department of Energy, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary for Policy and International Affairs, Department of Energy, received on September 28, 2004; to the Committee on Energy and Natural Resources.

EC–9506. A communication from the General Counsel, Federal Energy Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled ''Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992'' (Doc. No. RM93–11–002) received on September 28, 2004; to the Committee on Energy and Natural Resources.

EC–9507. A communication from the Administrator, Environmental Protection Agency, transmitting, pursuant to law, a report entitled ''The Superfund Innovative Technology Evaluation Program: Annual Report to Congress FY 2002''; to the Committee on Environment and Public Works.

EC–9508. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Iowa Update to Materials Incorporated by Reference'' (FRL#7812–5) received on September 28, 2004; to the Committee on Environment and Public Works.

EC–9509. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of State Plans for Designated Facilities; New Jersey'' (FRL#7818–4) received on September 28, 2004; to the Committee on Environment and Public Works.

EC–9510. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Connecticut: Final Authorization of State Hazardous Waste Management Program Revisions'' (FRL#7817–9) received on September 28, 2004; to the Committee on Environment and Public Works.

EC–9511. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''National Priorities List for Uncontrolled Hazardous Waste Sites'' (FRL#7817–6) received on September 28, 2004; to the Committee on Environment and Public Works.

EC–9512. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Interim Final Determination to Stay and/or Defer Sanctions, Maricopa County Environmental Services Department'' (FRL#7818–1) received on September 28, 2004; to the Committee on Environment and Public Works.

EC–9513. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Protection of Stratospheric Ozone; Listing of Substitutes in the Foam Sector'' (FRL#7821–6) received on September 28, 2004; to the Committee on Environment and Public Works.

EC–9514. A communication from the Assistant Secretary for Fish and Wildlife and Parks, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Migratory Bird Hunting: Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds'' (RIN1018–AT53) received on September 28, 2004; to the Committee on Environment and Public Works.

EC–9515. A communication from the Assistant Secretary for Fish and Wildlife and Parks, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Migratory Bird Hunting: Final Frameworks for Late Season Migratory Bird Hunting Regulations'' (RIN1018–AT53) received on September 28, 2004; to the Committee on Environment and Public Works.

EC–9516. A communication from the Assistant Secretary for Fish and Wildlife and Parks, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for the Mexican Spotted Owl'' (RIN1018–AT53) received on September 28, 2004; to the Committee on Environment and Public Works.

EC–9517. A communication from the Deputy Director, Fish and Wildlife Service, transmitting, pursuant to law, the report of a rule entitled ''Final Rule to Remove the Tiniam Monarch from the Federal List of Endangered and Threatened Wildlife'' (RIN1018–AI14) received on September 28, 2004; to the Committee on Environment and Public Works.

EC–9518. A communication from the Regulations Coordinator, Centers for Medicaid and Medicare Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Medicare Program; Continuation of Medicare Entitlement When Disability Benefit Entitlement Ends Because of Substantial Gainful Activity'' (RIN0938–AK94) received on September 28, 2004; to the Committee on Finance.

EC–9519. A communication from the Regulations Coordinator, Centers for Medicaid and Medicare Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Health Care Fraud and Abuse Data Collection Program; Technical Revisions to Healthcare Integrity and Protection Data Bank Collection Activities'' received on September 28, 2004; to the Committee on Finance.

EC–9520. A communication from the Regulations Coordinator, Centers for Medicaid and Medicare Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Medicare Program; Physicians' Referrals to Health Care Entities with which They Have Financial Relationships (Phase II); Correcting Amendment'' (RIN0938–AK67) received on September 28, 2004; to the Committee on Finance.

EC–9521. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''Collected Excise Taxes; Duties of Collector'' (RIN1545–BB75) received on September 28, 2004; to the Committee on Finance.

EC–9522. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled ''NQLX SFC Dealers Revenue Ruling'' (Rev. Rule 2004–94) received on September 28, 2004; to the Committee on Finance.

EC–9523. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, the Chief Human Capital Officers (CHCO) Council's Report to Congress for fiscal year 2003; to the Committee on Governmental Affairs.

EC–9524. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, the report of the Office of Inspector General for the period from October 1, 2003 through March 31, 2003; to the Committee on Governmental Affairs.

EC–9525. A communication from the Director, Office of General Counsel and Legal Policy, Office of Government Ethics, transmitting, pursuant to law, the report of a rule entitled ''Technical Updating Amendments to Executive Branch Financial Disclosure and Standards of Ethical Conduct Regulations'' (RIN3209–AA00 and 04) received on September 28, 2004; to the Committee on Governmental Affairs.

EC–9526. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, transmitting, pursuant to law, the report of a rule entitled ''Listing of Color Additives Subject to Certification; D&C Black No. 2; Correction'' (Doc. No. 1987C–0023) received on September 28 , 2004; to the Committee on Health, Education, Labor, and Pensions.

EC–9527. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, transmitting, pursuant to law, the report of a rule entitled ''Medical Devices; Labeling for Menstrual Tampons; Ranges of Absorbency, Change from 'Junior' to 'Light''' (Doc. No. 2000N–1520) received on September 28, 2004; to the Committee on Health, Education, Labor, and Pensions.

EC–9528. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, transmitting, pursuant to law, the report of a rule entitled ''Skin Protectant Drug Products for Over-the-Counter Human Use; Final Monograph; Technical Amendment'' (RIN0910–AF42) received on September 28, 2004; to the Committee on Health, Education, Labor, and Pensions.

EC–9529. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, transmitting, pursuant to law, the report of a rule entitled ''Dental Devices; Dental Noble Metal Alloys and Dental Base Metal Alloys; Designation of Special Controls'' (Doc. No. 2003N–0390) received on September 28, 2004; to the Committee on Health, Education, Labor, and Pensions.

EC–9530. A communication from the Director, Regulations Policy and Management Staff, Food and Drug Administration, transmitting, pursuant to law, the report of a rule entitled ''Presubmission Conferences'' (Doc. No. 2000N–1399) received on September 28, 2004; to the Committee on Health, Education, Labor, and Pensions.

EC–9531. A communication from the Acting Director of Communications and Legislative Affairs, Equal Employment Opportunity Commission, transmitting, pursuant to law, a report relative to the Commission's Inventory of Commercial and Inherently Governmental Activities; to the Committee on Health, Education, Labor, and Pensions.

EC–9532. A communication from the Director, Administrative Office of the United States Courts, transmitting, pursuant to law, a report relative to time limits for the

federal courts to act on capital habeas petitions and motions for rehearing; to the Committee on the Judiciary.

EC–9533. A communication from the Vice Chair, Election Assistance Commission, transmitting, pursuant to law, the report of a rule entitled ''Statement of Policy Regarding National Mail Voter Registration Form'' received on September 28, 2004; to the Committee on Rules and Administration.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HATCH, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

H.R. 1417. To amend title 17, United States Code, to replace copyright arbitration royalty panels with Copyright Royalty Judges.

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, without amendment and with a preamble:

S. Con. Res. 121. A concurrent resolution supporting the goals and ideals of the World Year of Physics.

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. GRAHAM of Florida (for himself and Mr. NELSON of Florida):

S. 2857. A bill to authorize ecosystem restoration projects for the Indian River Lagoon and the Picayune Strand, Collier County, in the State of Florida; to the Committee on Environment and Public Works.

By Mr. GREGG (for himself, Mr. ALLARD, and Mr. ALEXANDER):

S. 2858. A bill to amend the Internal Revenue Code of 1986 to clarify the proper treatment of differential wage payments made to employees called to active duty in the uniformed services, and for other purposes; to the Committee on Finance.

By Ms. MURKOWSKI:

S. 2859. A bill to amend the National Aquaculture Act of 1980 to prohibit the issuance of permits for marine aquaculture facilities until requirements for such permits are enacted into law; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. SANTORUM (for himself and Mr. ROCKEFELLER):

S. 2860. A bill to amend the Internal Revenue Code of 1986 to classify automatic fire sprinkler systems as 5-year property for purposes of depreciation; to the Committee on Finance.

By Mrs. MURRAY (for herself, Mr. KENNEDY, Ms. MIKULSKI, Mr. DURBIN, Mr. DODD, and Mr. REED):

S. 2861. A bill to prevent abuse of the special allowance subsidies under the Federal Family Education Loan Program; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. CLINTON:

S. 2862. A bill to amend the Foreign Assistance Act of 1961 to provide assistance for developing countries to promote quality basic education and to establish the achievement of universal basic education in all developing countries as an objective of United States foreign assistance policy, and for other purposes; to the Committee on Foreign Relations.

By Mr. HATCH (for himself, Mr. LEAHY, Mr. SCHUMER, Mr. DEWINE, and Mr. DASCHLE):

S. 2863. A bill to authorize appropriations for the Department of Justice for fiscal years 2005, 2006, and 2007, and for other purposes; to the Committee on the Judiciary.

By Mr. GRASSLEY (for himself, Mr. LEAHY, Mr. BOND, Mr. NELSON of Nebraska, and Mr. FEINGOLD):

S. 2864. A bill to extend for eighteen months the period for which chapter 12 of title 11, United States Code, is reenacted; to the Committee on the Judiciary.

By Mr. DAYTON:

S. 2865. A bill to require that automobiles and light trucks are able to operate on a fuel mixture that is at least 85 percent ethanol, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. INHOFE (for himself, Mr. HAGEL, Mr. ROBERTS , Mr. BURNS, Mr. CORNYN, Ms. CANTWELL, Mrs. BOXER, Mr. NELSON of Nebraska, and Mr. CRAIG):

S. 2866. A bill to amend the Farm Security and Rural Investment Act of 2002 to clarify the authority of the Secretary of Agriculture and the Commodity Credit Corporation to enter into memorandums of understanding with a State regarding the collection of approved State commodity assessments on behalf of the State from the proceeds of marketing assistance loans; read the first time.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. SMITH (for himself and Mr. WYDEN):

S. Res. 441. A resolution expressing the sense of the Senate that October 17, 1984, the date of the restoration by the Federal Government of Federal recognition to the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, should be memorialized; to the Committee on Indian Affairs.

By Ms. LANDRIEU (for herself and Mr. ALLEN):

S. Res. 442. A resolution apologizing to the victims of lynching and their descendants for the Senate's failure to enact anti-lynching legislation; to the Committee on the Judiciary.

By Mr. FRIST (for himself and Mr. DASCHLE):

S. Res. 443. A resolution to authorize testimony, document production, and legal representation in United States v. Roberto Martin; considered and agreed to.

By Mr. FRIST (for himself, Mr. DASCHLE, Mr. SPECTER, Mr. ALEXANDER, and Mr. REID):

S. Res. 444. A resolution congratulating and commending the Veterans of foreign Wars of the United States and its national Commander-in-Chief, John Furgess of Tennessee; considered and agreed to.

## ADDITIONAL COSPONSORS

S. 282

At the request of Ms. SNOWE, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 282, a bill to amend the Education Sciences Reform Act of 2002 to require the Statistics Commissioner to collect information from coeducational secondary schools on such schools' athletic programs.

S. 473

At the request of Mr. FEINGOLD, the name of the Senator from Delaware (Mr. CARPER) was added as a cosponsor of S. 473, a bill to amend the Federal Water Pollution Control Act to clarify the jurisdiction of the United States over waters of the United States.

S. 533

At the request of Mr. SCHUMER, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 533, a bill to provide for a medal of appropriate design to be awarded by the President to the next of kin or other representative of those individuals killed as a result of the terrorist attacks of September 11, 2001.

S. 847

At the request of Mr. NELSON of Florida, his name was added as a cosponsor of S. 847, a bill to amend title XIX of the Social Security Act to permit States the option to provide medicaid coverage for low income individuals infected with HIV.

S. 977

At the request of Mr. FITZGERALD, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 977, a bill to amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to require that group and individual health insurance coverage and group health plans provide coverage from treatment of a minor child's congenital or developmental deformity or disorder due to trauma, infection, tumor, or disease.

S. 983

At the request of Mr. CHAFEE, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 983, a bill to amend the Public Health Service Act to authorize the Director of the National Institute of Environmental Health Sciences to make grants for the development and operation of research centers regarding environmental factors that may be related to the etiology of breast cancer.

S. 989

At the request of Mr. ENZI, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of S. 989, a bill to provide death and disability benefits for aerial firefighters who work on a contract basis for a public agency and suffer death or disability in the line of duty, and for other purposes.

S. 1010

At the request of Mr. HARKIN, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S. 1010, a bill to enhance and further research into paralysis and to improve rehabilitation and the quality of life for persons living with paralysis and other physical disabilities.

S. 1304

At the request of Ms. SNOWE, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1304, a bill to improve the health of women through the establishment of Offices of Women's Health within the

Department of Health and Human Services.

S. 1379

At the request of Mr. JOHNSON, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 1379, a bill to require the Secretary of the Treasury to mint coins in commemoration of veterans who became disabled for life while serving in the Armed Forces of the United States.

S. 1601

At the request of Mr. DASCHLE, his name was added as a cosponsor of S. 1601, a bill to amend the Indian Child Protection and Family Violence Prevention Act to provide for the reporting and reduction of child abuse and family violence incidences on Indian reservations, and for other purposes.

S. 1700

At the request of Mr. HATCH, the name of the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 1700, a bill to eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders, to improve and expand the DNA testing capacity of Federal, State, and local crime laboratories, to increase research and development of new DNA testing technologies, to develop new training programs regarding the collection and use of DNA evidence, to provide post-conviction testing of DNA evidence to exonerate the innocent, to improve the performance of counsel in State capital cases, and for other purposes.

S. 1996

At the request of Mr. DASCHLE, the name of the Senator from Colorado (Mr. CAMPBELL) was added as a cosponsor of S. 1996, a bill to enhance and provide to the Oglala Sioux Tribe and Angostura Irrigation Project certain benefits of the Pick-Sloan Missouri River basin program.

S. 2338

At the request of Mr. BOND, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S. 2338, a bill to amend the Public Health Service Act to provide for arthritis research and public health, and for other purposes.

S. 2363

At the request of Mr. LEAHY, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 2363, a bill to revise and extend the Boys and Girls Clubs of America.

S. 2426

At the request of Mr. NELSON of Nebraska, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 2426, a bill to amend title XVIII of the Social Security Act to clarify the treatment of payment under the medicare program for clinical laboratory tests furnished by critical access hospitals.

S. 2431

At the request of Mr. NELSON of Nebraska, the names of the Senator from Michigan (Ms. STABENOW) and the Senator from Nevada (Mr. ENSIGN) were added as cosponsors of S. 2431, a bill to amend title XVIII of the Social Security Act to improve access to diabetes self-management training by designating certified diabetes educators recognized by the National Certification Board of Diabetes Educators as certified providers for purposes of outpatient diabetes education services under part B of the medicare program.

S. 2526

At the request of Mr. BOND, the name of the Senator from Colorado (Mr. CAMPBELL) was added as a cosponsor of S. 2526, a bill to reauthorize the Children's Hospitals Graduate Medical Education Program.

S. 2568

At the request of Mr. BIDEN, the names of the Senator from Rhode Island (Mr. CHAFEE) and the Senator from South Carolina (Mr. HOLLINGS) were added as cosponsors of S. 2568, a bill to require the Secretary of the Treasury to mint coins in commemoration of the tercentenary of the birth of Benjamin Franklin, and for other purposes.

S. 2593

At the request of Mrs. LINCOLN, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 2593, a bill to amend title XVIII of the Social Security Act to provide medicare beneficiaries with access to geriatric assessments and chronic care management, and for other purposes.

S. 2715

At the request of Mr. COLEMAN, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 2715, a bill to improve access to graduate schools in the United States for international students and scholars.

S. 2770

At the request of Mr. DASCHLE, the name of the Senator from Arizona (Mr. MCCAIN) was added as a cosponsor of S. 2770, a bill to establish a National Commission on American Indian Trust Holdings.

S. 2808

At the request of Mr. BYRD, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 2808, a bill to amend title 5, United States Code, to make the date of the signing of the United States Constitution a legal public holiday, and for other purposes.

S. 2827

At the request of Mrs. CLINTON, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 2827, a bill to amend the Federal Rules of Evidence to create an explicit privilege to preserve medical privacy.

S. CON. RES. 136

At the request of Mr. CONRAD, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. Con. Res. 136, a concurrent resolution honoring and memorializing the passengers and crew of United Airlines Flight 93.

S. RES. 271

At the request of Mr. COLEMAN, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. Res. 271, a resolution urging the President of the United States diplomatic corps to dissuade member states of the United Nations from supporting resolutions that unfairly castigate Israel and to promote within the United Nations General Assembly more balanced and constructive approaches to resolving conflict in the Middle East.

S. RES. 311

At the request of Mr. BROWNBACK, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a cosponsor of S. Res. 311, a resolution calling on the Government of the Socialist Republic of Vietnam to immediately and unconditionally release Father Thadeus Nguyen Van Ly, and for other purposes.

S. RES. 408

At the request of Mr. SMITH, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. Res. 408, a resolution supporting the construction by Israel of a security fence to prevent Palestinian terrorist attacks, condemning the decision of the International Court of Justice on the legality of the security fence, and urging no further action by the United Nations to delay or prevent the construction of the security fence.

S. RES. 424

At the request of Mr. CRAIG, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. Res. 424, a resolution designating October 2004 as ''Protecting Older Americans From Fraud Month''.

AMENDMENT NO. 3704

At the request of Mr. WYDEN, the names of the Senator from Iowa (Mr. HARKIN) and the Senator from New Jersey (Mr. CORZINE) were added as cosponsors of amendment No. 3704 proposed to S. 2845, a bill to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes.

AMENDMENT NO. 3706

At the request of Mrs. FEINSTEIN, her name was withdrawn as a cosponsor of amendment No. 3706 proposed to S. 2845, a bill to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes.

At the request of Mr. SPECTER, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of amendment No. 3706 proposed to S. 2845, supra.

AMENDMENT NO. 3710

At the request of Mr. NELSON of Nebraska, his name was added as a cosponsor of amendment No. 3710 intended to be proposed to S. 2845, a bill to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GREGG (for himself, Mr. ALLARD, and Mr. ALEXANDER):

S. 2858. A bill to amend the Internal Revenue Code of 1986 to clarify the proper treatment of differential wage payments made to employees called to active duty in the uniformed services, and for other purposes; to the Committee on Finance.

Mr. GREGG. Mr. President, military action in Afghanistan and Iraq has brought to light another example of how outdated and burdensome government policies can punish generous employers. Employers that continue to pay their employees now on active duty in the uniformed services are experiencing tax and pension difficulties that are discouraging this pro-worker, patriotic gesture. Apparently, when it comes to companies showing their respect for their employees called to serve, there is special meaning to the old cliché ''no good deed goes unpunished.''

The National Committee for Employer Support for the Guard and Reserve, a nationwide association, reports that over 2,500 employers have signed a pledge of support and have gone above and beyond the requirements of the law in support of their National Guard and Reserve employees. This includes many of our Nation's largest and most reputable corporations, including 3M, McDonalds, Wal-Mart, Home Depot, Liberty Mutual and many others. These commendable companies provide reservist employees who are on active duty with ''differential pay'' that makes up the difference between their military stipend and civilian salary.

Not just national companies provide special pay to our men and women who are called to serve overseas. In New Hampshire, some of the most remarkable stories of corporate patriotism can be found. BAE Systems of Nashua provides differential pay to their 25 called-up employees and continuing access to benefits to family members. The company even provides a stipend to make up the lost pay of active duty spouses of company employees when the spouse's employer is not able to provide differential pay.

Consider also the account of Mr. Marian Noronha, Chairman and Founder of Turbocam, a manufacturer based in Dover, New Hampshire. An immigrant from India, Mr. Noronha has not only provided his employees with differential pay and continued family health benefits, but has also extended to each of his activated employees a $10,000 line of credit. His active duty reservist and Guard employees have used this money to, among other things, purchase personal computers so their families can communicate with them while they are overseas. Several other New Hampshire private-sector companies, including Hitchiner Manufacturing Company in Milford, have exemplary records when it comes to dealing with reservist employees. Also, New Hampshire's Governor Benson by Executive Order has extended differential pay for up to 18 months to State employees who have been called to active duty.

Under current law, employers of reservists and guardsmen called up for active duty are required to treat them as if they are on a leave of absence under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). The Act does not require employers to pay reservists who are on active duty. But as I have pointed out, many employers pay the reservists the difference between their military stipends and their regular salaries. Some employers provide this ''differential pay'' for up to three years. For employee convenience, many of these companies also allow deductions from the differential payment for contributions to their 401(k) retirement plans.

The conflict arises, however, because a 1969 IRS Revenue Ruling considers the employment relationship terminated when active duty begins. This ruling prevents employers from treating the differential pay as wages for income tax purposes, resulting in unexpected tax bills at the end of the year for these military personnel. Further, the contributions made to the worker's retirement account potentially invalidate, disqualify, the employer's entire retirement plan which could make all amounts immediately taxable to plan participants and the employer.

The Uniformed Services Differential Pay Protection Act that I am introducing today clarifies that differential wage payments are to be treated as wages to current employees for income tax purposes and that retirement plan contributions are permissible.

Differential wage payments would be treated as wages for income tax withholding purposes and reported on the worker's W–2 form. This means that active duty personnel will not be hit with end-of-the-year tax bills.

No New Taxes: The legislation does not change present law, and deferential wage payments will not be subject to Social Security and unemployment compensation taxes.

Definition: ''Differential wage payments'' are defined to mean any payment which: (1) is made by an employer to an individual while he or she is on active duty for a period of more than 30 days, and (2) represents all or a portion of the wages the individual would have received from the employer if he or she were performing service for the employer.

An individual receiving differential wage payments would continue to be treated as an employee for purposes of the rules applicable to qualified retirement plans, removing the threat that contributions on his or her behalf would invalidate the employer's entire plan.

Distributions Protected: Clarifying language is included to ensure that individuals would continue to be permitted to take distributions from their accounts when they leave their jobs for active duty. Thus, the right to receive distributions will be preserved even though individuals are treated as current employees for contribution purposes. The bill includes a prohibition on making elective deferrals or employee contributions for six months after receiving a distribution.

Satisfying Nondiscrimination Rules: In order to avoid disruptions in retirement savings plans and to remove disincentives, employers could disregard contributions to retirement savings accounts based on differential wage payments for nondiscrimination testing purposes, provided that such payments are available to all mobilized employees on reasonably equivalent terms.

In summary, the Uniformed Services Differential Pay Protection Act upholds the principle that employers should not be penalized for their generosity towards our Nation's reservists and members of the National Guard.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2858

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Uniformed Services Differential Pay Protection Act''.

**SEC. 2. INCOME TAX WITHHOLDING ON DIFFERENTIAL WAGE PAYMENTS.**

(a) IN GENERAL.—Section 3401 of the Internal Revenue Code of 1986 (relating to definitions) is amended by adding at the end the following new subsection:

''(i) DIFFERENTIAL WAGE PAYMENTS TO ACTIVE DUTY MEMBERS OF THE UNIFORMED SERVICES.—

''(1) IN GENERAL.—For purposes of subsection (a), any differential wage payment shall be treated as a payment of wages by the employer to the employee.

''(2) DIFFERENTIAL WAGE PAYMENT.—For purposes of paragraph (1), the term 'differential wage payment' means any payment which—

''(A) is made by an employer to an individual with respect to any period during which the individual is performing service in the uniformed services while on active duty for a period of more than 30 days, and

''(B) represents all or a portion of the wages the individual would have received from the employer if the individual were performing service for the employer.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to remuneration paid after December 31, 2004.

**SEC. 3. TREATMENT OF DIFFERENTIAL WAGE PAYMENTS FOR RETIREMENT PLAN PURPOSES.**

(a) PENSION PLANS.—

(1) IN GENERAL.—Section 414(u) of the Internal Revenue Code of 1986 (relating to special rules relating to veterans' reemployment rights under USERRA) is amended by adding at the end the following new paragraph:

''(11) TREATMENT OF DIFFERENTIAL WAGE PAYMENTS.—

''(A) IN GENERAL.—Except as provided in this paragraph, for purposes of applying this title to a retirement plan to which this subsection applies—

''(i) an individual receiving a differential wage payment shall be treated as an employee of the employer making the payment,

''(ii) the differential wage payment shall be treated as compensation, and

''(iii) the plan shall not be treated as failing to meet the requirements of any provision described in paragraph (1)(C) by reason of any contribution which is based on the differential wage payment.

''(B) SPECIAL RULE FOR DISTRIBUTIONS.—

''(i) IN GENERAL.—Notwithstanding subparagraph (A)(i), for purposes of section 401(k)(2)(B)(i)(I), 403(b)(7)(A)(ii), 403(b)(11)(A), or 457(d)(1)(A)(ii), an individual shall be treated as having been severed from employment during any period the individual is performing service in the uniformed services described in section 3401(i)(2)(A).

''(ii) LIMITATION.—If an individual elects to receive a distribution by reason of clause (i), the plan shall provide that the individual may not make an elective deferral or employee contribution during the 6-month period beginning on the date of the distribution.

''(C) NONDISCRIMINATION REQUIREMENT.—Subparagraph (A)(iii) shall apply only if all employees of an employer performing service in the uniformed services described in section 3401(i)(2)(A) are entitled to receive differential wage payments on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions based on the payments. For purposes of applying this subparagraph, the provisions of paragraphs (3), (4), and (5), of section 410(b) shall apply.

''(D) DIFFERENTIAL WAGE PAYMENT.—For purposes of this paragraph, the term 'differential wage payment' has the meaning given such term by section 3401(i)(2).''

(2) CONFORMING AMENDMENT.—The heading for section 414(u) of such Code is amended by inserting ''AND TO DIFFERENTIAL WAGE PAYMENTS TO MEMBERS ON ACTIVE DUTY'' after ''USERRA''.

(b) DIFFERENTIAL WAGE PAYMENTS TREATED AS COMPENSATION FOR INDIVIDUAL RETIREMENT PLANS.—Section 219(f)(1) of the Internal Revenue Code of 1986 (defining compensation) is amended by adding at the end the following new sentence: ''The term 'compensation' includes any differential wage payment (as defined in section 3401(i)(2)).''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2004.

(d) PROVISIONS RELATING TO PLAN AMENDMENTS.—

(1) IN GENERAL.—If this subsection applies to any plan or annuity contract amendment—

(A) such plan or contract shall be treated as being operated in accordance with the terms of the plan or contract during the period described in paragraph (2)(B)(i), and

(B) except as provided by the Secretary of the Treasury, such plan shall not fail to meet the requirements of the Internal Revenue Code of 1986 or the Employee Retirement Income Security Act of 1974 by reason of such amendment.

(2) AMENDMENTS TO WHICH SECTION APPLIES.—

(A) IN GENERAL.—This subsection shall apply to any amendment to any plan or annuity contract which is made—

(i) pursuant to any amendment made by this section, and

(ii) on or before the last day of the first plan year beginning on or after January 1, 2007.

(B) CONDITIONS.—This subsection shall not apply to any plan or annuity contract amendment unless—

(i) during the period beginning on the date the amendment described in subparagraph (A)(i) takes effect and ending on the date described in subparagraph (A)(ii) (or, if earlier, the date the plan or contract amendment is adopted), the plan or contract is operated as if such plan or contract amendment were in effect; and

(ii) such plan or contract amendment applies retroactively for such period.

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By Ms. MURKOWSKI:

S. 2859. A bill to amend the National Aquaculture Act of 1980 to prohibit the issuance of permits for marine aquaculture facilities until requirements for such permits are enacted into the law; to the Committee on Agriculture, Nutrition, and Forestry.

Ms. MURKOWSKI. Mr. President, it is a fact that scientists, the media and the public are gradually awakening to the serious disadvantages of fish raised in fish farming operations compared to naturally healthy wild fish species such as Alaska salmon, halibut, sablefish, crab and many other species.

News reports are now common that cite not only the general health advantages of eating fish at least once or twice a week, but the specific advantages of fish such as wild salmon, which contains essential Omega-3 fatty acids that may help reduce the risk of heart disease and possibly have similar beneficial effects on other diseases.

Educated and watchful consumers have also seen recent stories citing research demonstrating that farmed salmon fed vegetable-based food does not have the same beneficial impact on cardio-vascular health, but that the demand for non-vegetable-based food for fish farms may be decimating populations of other key fish species.

Those same alert consumers may also have seen stories indicating that fish farms may create serious pollution problems from the concentration of fish feces and uneaten food, that fish farms may harbor diseases that can be transmitted to previously healthy wild fish stocks, and that fish farming has had a devastating effect on communities that depend on traditional fisheries.

And yet, despite abundant evidence that fish farming practices are deeply problematic, a small cadre of federal bureaucrats continues to push hard for legislation that would encourage the development of huge new fish farms off our coasts. These same people have been pushing the idea for a number of years, and are closer than ever to presenting draft legislation that would vastly expand fish farming by encouraging the development of new farms in the U.S. Exclusive Economic Zone from 3 to 200 miles offshore.

Not only does this small group want to encourage such development, but reports indicate they want to change the rules to place all the decision-making authority over new farms in the hands of just one agency—which just happens to be theirs—rather than continue the current system where authority is spread among the agencies with the greatest expertise in different areas, such as hydraulic engineering, environmental protection, fish biology, etc.

We cannot afford a rush to judgment on this issue—it is far too dangerous if we make a mistake.

The Natural Stock Conservation Act I am introducing today lays down a marker for where this debate needs to go. It would prohibit the development of new offshore aqua-culture operations until Congress has acted to ensure every federal agency involved does the necessary analyses in areas such as disease control, engineering, pollution prevention, biological and genetic impacts, and other critical issues, none of which are specifically required under existing law.

I realize it is far too late in this session to anticipate action on such a controversial and complex issue, but I intend this bill to stimulate further debate on this issue next year, as Congress begins serious work on the future of our ocean programs in response to the U.S. Ocean Commission report. I intend to pursue this discussion vigorously, and I will be calling on other coastal senators to work with me.

We all want to make sure we enjoy abundant supplies of healthy foods in the future, but not if it means unnecessary and avoidable damage to wild species, to the environment generally, and to the economies of America's coastal fishing communities.

I ask unanimous consent that the text of my bill be printed in the RECORD.

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

S. 2859

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Natural Stock Conservation Act of 2004''.

**SEC. 2. PROHIBITION ON PERMITS FOR AQUACULTURE.**

The National Aquaculture Act of 1980 (16 U.S.C. 2801 et seq.) is amended—

(1) by redesignating sections 10 and 11 as sections 11 and 12 respectively; and

(2) by inserting after section 9 the following new section:

PROHIBITION ON PERMITS FOR AQUACULTURE

''SEC. 10. (a) IN GENERAL.—The head of an agency with jurisdiction to regulate aquaculture may not issue a permit or license to permit an aquaculture facility located in the exclusive economic zone to operate until after the date on which a bill is enacted into law that—

''(1) sets out the type and specificity of the analyses that the head of an agency with jurisdiction to regulate aquaculture shall carry out prior to issuing any such permit or license, including analyses related to—

''(A) disease control;

''(B) structural engineering;

''(C) pollution;

''(D) biological and genetic impacts;

''(E) access and transportation;

''(F) food safety; and

''(G) social and economic impacts of such facility on other marine activities, including commercial and recreational fishing; and

''(2) requires that a decision to issue such a permit or license be—

''(A) made only after the head of the agency that issues such license or permit

consults with the Governor of each State located within a 200-mile radius of the aquaculture facility; and

''(B) approved by the regional fishery management council that is granted authority under title III of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851 et seq.) over a fishery in the region where the aquaculture facility will be located.

''(b) DEFINITIONS.—In this section:

''(1) AGENCY WITH JURISDICTION TO REGULATE AQUACULTURE.—The term 'agency with jurisdiction to regulate aquaculture' means each agency and department of the United States, as follows:

''(A) The Department of Agriculture.

''(B) The Coast Guard.

''(C) The Department of Commerce.

''(D) The Environmental Protection Agency.

''(E) The Department of the Interior.

''(F) The U.S. Army Corps of Engineers.

''(2) EXCLUSIVE ECONOMIC ZONE.—The term 'exclusive economic zone' has the meaning given that term in section 3 of the of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802).

''(3) REGIONAL FISHERY MANAGEMENT COUNCIL.—The term 'regional fishery management council' means a regional fishery management council established under section 302(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)).''.

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By Mr. SANTORUM (for himself and Mr. ROCKEFELLER):

S. 2860. A bill to amend the Internal Revenue Code of 1986 to classify automatic fire sprinkler systems as 5-year property for purposes of depreciation; to the Committee on Finance.

Mr. SANTORUM. Mr. President, today I am introducing along with Senator ROCKEFELLER the Fire Sprinkler Incentive Act of 2004. Passage of this bipartisan bill would serve to help reduce the tremendous annual economic and human loss that fire in the United States inflicts on our Nation.

In the United States, fire departments responded to approximately 1.7 million fires in 2002. Annually, over 500,000 of these are structural fires causing approximately 3,400 deaths, around 100 of which are firefighters. Fire also caused some 18.5 million civilian injuries and $10.3 billion in direct property loss. The indirect cost of fire in the United States annually exceeds $80 billion. These losses are staggering. All of this translates to the fact that fire departments respond to a fire every 18 seconds. Every 60 seconds a fire breaks out in a structure and in a residential structure every 80 seconds.

There are literally thousands of high-rise buildings built under older codes that lack adequate fire protection. In addition, billions of dollars were spent to make these and other buildings handicapped accessible, but people with disabilities now occupying these buildings are not adequately protected from fire. At recent code hearings, representatives of the health care industry testified that there are approximately 4,200 nursing homes that need to be retrofitted with fire sprinklers. They further testified that the cost of protecting these buildings with fire sprinklers would have to be raised through corresponding increases in Medicare and Medicaid. In addition to the alarming number of nursing homes lacking fire sprinkler protection, there are literally thousands of assisted living facilities housing older Americans and people with disabilities that lack fire sprinkler protection.

The solution resides in automatic sprinkler systems that are usually triggered within 4 minutes of the temperature rising above 120 degrees. The National Fire Protection Association (NFPA) has no record of a fire killing more than two people in a public assembly, educational, institutional, or residential building that has fully operational sprinklers. Furthermore, sprinklers are responsible for dramatically reducing property loss.

Building owners do not argue with fire authorities over the logic of protecting their building with fire sprinklers. The issue is cost. This bill would drastically reduce the staggering annual economic toll of fire in America and thereby dramatically improve the quality of life for everyone involved. This legislation provides a tax incentive for businesses to install sprinklers through the use of a 5-year depreciation period, opposed to the current 27.5 or 39-year period for installations in residential rental and non-residential real property respectively. While only a start, the bill will help eliminate the massive losses seen in nursing homes, nightclubs, office buildings, apartment buildings, manufacturing facilities, and other for-profit entities.

This bill enjoys support from a variety of organizations. They include: the American Insurance Association, the American Fire Sprinkler Association, the California Department of Forestry and Fire Protection, Campus Firewatch, Congressional Fire Services Institute, Independent Insurance Agents & Brokers of America, International Association of Arson Investigators, International Association of Fire Chiefs, International Fire Service Training Association, National Fire Protection Association, National Fire Sprinkler Association, National Volunteer Fire Council, the Society of Fire Protection Engineers, and the Mechanical Contractors Association of America.

The Fire Sprinkler Incentive Act of 2004 provides long needed safety incentives for building owners that will help fire departments across the country save lives. I ask my colleagues for their support of this important piece of legislation.

Mr. ROCKEFELLER. Mr. President, every 18 seconds a fire department somewhere in America responds to a fire. And sadly, in 2001, not including those killed in the terrorist attacks on September 11, there were almost 4,000 deaths in America resulting from fires, including the deaths of 99 firefighters. Obviously, the Government cannot prevent every tragedy. But when we can help, we ought to. That is why I am proud to introduce legislation today with my friend from Pennsylvania, Senator SANTORUM, that will create incentives for the installation of fire sprinkler systems, which are indisputably effective in limiting death and destruction by fires. The Fire Sprinkler Incentive Act of 2004 will make retrofit installation of fire sprinklers more affordable.

The National Fire Protection Association has no record of a fire killing more than two people in a building that had a properly installed and functioning sprinkler system. Less important than saving lives, but still important, sprinklers can dramatically reduce the property damage caused by fires. Because sprinkler systems are so successful, many jurisdictions require that newly constructed buildings be built with proper fire suppression technology.

Unfortunately, building codes for new construction cannot protect the many people who are living, working, or meeting in older buildings that do not have sprinklers. And because retrofitting buildings is so expensive few property owners can reasonably afford the upgrade. The legislation that the Senator from Pennsylvania and I are introducing today will provide some tax relief to property owners who are willing to make the investment in sprinkler systems that can save lives.

A business that operates nursing homes, for example, may not be able to afford to retrofit its older facilities without charging residents insupportable fees. The Fire Sprinkler Incentive Act will help ameliorate the costs of sprinkler installation by enabling property owners to depreciate the investment over a five-year period. This small change to the Tax Code can result in lives saved and property preserved.

I look forward to working with my colleagues to get this important legislation enacted.

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By Mr. HATCH (for himself, Mr. LEAHY, Mr. SCHUMER, Mr. DEWINE, and Mr. DASCHLE):

S. 2863. A bill to authorize appropriations for the Department of Justice for fiscal years 2005, 2006, and 2007, and for other purposes; to the Committee on the Judiciary.

Mr. HATCH. Mr. President, I rise today along with my colleagues Senators LEAHY, DEWINE, and SCHUMER to introduce the ''Department of Justice Appropriations Authorization Act, fiscal years 2005 through 2007.'' I want to thank Senator LEAHY for his hard work on this bill. I also want to thank the House Judiciary Committee under the leadership of Chairman SENSENBRENNER for developing legislation upon which we have been able to build.

I am pleased that Congress passed a Department of Justice reauthorization bill last Congress for the first time in over two decades. The bill, however, did not address a number of authorities, including the Office of Justice

Programs. The bill we are introducing today authorizes and consolidates and makes permanent a host of appropriations authorities. These authorities are essential to the administration of the Department of Justice and its ability to accomplish its mission.

The Department of Justice's central duty is to provide security and justice for all Americans. I believe this legislation is essential to the Department's work in protecting America from future terrorist attacks. Importantly, the legislation will facilitate the Department's ability to continue providing much-needed assistance and advice to our state and local law enforcement.

I want to take a moment to highlight some of the more important provisions of this bill. Title I of the bill authorizes appropriations for the major components of the Department for fiscal year 2005 through fiscal year 2007. Among these authorizations are funding for Federal Bureau of Investigation and the newly created Terrorism Threat Integration Center to fight the war against terrorism, and the Drug Enforcement Administration to combat the trafficking of illegal drugs.

Title II of the bill restructures and authorizes many of the grant programs at the Department. Specifically, it restructures the Byrne and Local Law Enforcement Block Grant (LLEBG) programs and authorizes for the first time ever the Local Law Enforcement Block Grant. By merging these two programs into one Edward Byrne Memorial Justice Assistance Grant program (JAG), it will allow states to make one application for funds and streamline the process.

I want to take a moment and address the concern I have heard raised that the merger of these programs will somehow cause states to lose the assistance they rely upon. Although we have combined the funds into one program, we have kept the same purpose areas so that activities and programs funded currently under Byrne and LLEBG may continue to be eligible for funds under the JAG program. Additionally, the money allocated to the JAG program is set up to split the funds 50/50—fifty percent of the JAG funds are allocated in the same manner that Byrne grants are currently allocated, and fifty percent are allocated in the same manner that the LLEBG funds are currently allocated. Each state receives 0.25 percent of the overall funds. Then of the remaining funds, 50 percent is distributed based upon population, similar to the Byrne grants, and the other 50 percent is based on the violent crime rate, similar to the LLEBG. In other words, the JAG program is designed to address the same purposes of the Byrne and LLEBG programs, and funds are intended to be allocated in the same manner. The only difference is that those funds will now come from one pot of money—the JAG account.

That being said, I do share the concern that money for the one pot, the JAG account, will be reduced. I have supported full funding for Byrne and LLEBG grants in the past, and I will continue to support funding for the JAG program. For this reason, this legislation authorizes the JAG account to receive the total amount of funds that both the Byrne and LLEBG programs received in Fiscal Year 2003 plus a 2 percent increase. I am hopeful that the Appropriators will fund the new JAG program at the same level. In fact, one of the benefits of creating one new program is that it will help limit the earmarking of these grants, thus allowing meritorious programs to receive money that may have been previously allocated for some earmark.

In addition to the authorization of the JAG program, this legislation restructures the COPS program as one single block grant program covering all of its current purposes so local governments will need to file only one COPS application for any of these purposes. The bill reauthorizes the Boys and Girls Club of America, the Regional Information Sharing System (RISS), the Crime Free Rural States Grant program, the National Criminal History Background Check System, the National Incident-Based Reporting System, and the records of the National Crime Information Center. Further, the bill makes a number of important changes to grants that assist victims of crime and to the drug courts to enable these valuable programs to be more effective. *In addition, the legislation creates a new Office of Weed and Seed Strategies to replace the never-before authorized executive Office of Weed and Seed Strategies.

The bill includes the Prevention and Recovery of Missing Children Act and the Senior Safety Act to better protect our nation's most vulnerable citizens: our children and seniors. The Prevention and Recovery of Missing Children Act sets standards for the registration of sex offenders which will make our registration system more accurate and reliable. The Senior Safety Act enhances the penalties for crimes committed against seniors, including fraud and telemarketing fraud, and includes a provision to safeguard pensions from fraud and theft.

One of the keys to fighting terrorism is a tough arsenal of laws designed to target those who support or assist terrorists and their cause, such as those who launder money. This legislation includes the Combating Money Laundering and Terrorist Financing Act of 2004 which adds several provisions to the list of specified unlawful activities within the RICO statute that serve as predicate offenses under the money laundering statute. It adds a provision to the civil forfeiture statute to allow for the forfeiture of property outside U.S. territorial boundaries if the property was used in the planning of a terrorist act that occurred within the U.S. It also includes a parallel transaction provision which provides that all parts of a parallel or dependent financial transaction are considered a money laundering offense if one part of that transaction involves the proceeds of an unlawful activity.

This legislation also includes the Koby Mandell Act which creates within the DOJ an Office of Justice for Victims of Overseas Terrorism. The office will assume responsibility for the administration of the Rewards for Justice Program and its website. The office will offer rewards in an effort to capture terrorists involved in harming American citizens overseas. It will also provide other related services including sending U.S. officials to funerals of American victims of terrorism overseas.

This bill also contains important immigration provisions, including the PROMISE Act. The PROMISE Act is an immigration enforcement measure that amends the Immigration and Nationality Act so that those who fail to satisfy their child support obligations are ineligible to enter the United States. Further, those already in the United States will be ineligible for certain immigration benefits, such as citizenship.

This bill is a step in the right direction. I look forward to continuing to work with Senator LEAHY and the House Judiciary Committee to enact this legislation. I ask unanimous consent that a section-by-section analysis of the bill be printed in the RECORD.

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

DOJ REAUTH SECTION BY SECTION

*Section 1. Short Title; Table of Contents*

Section 1 provides that the bill may be cited as the ''Department of Justice Appropriations Authorization Act, Fiscal Years 2005 through 2007'' and sets forth the table of contents.

TITLE I—AUTHORIZATION OF APPROPRIATIONS

*Section 101. Authorization of Appropriations for Fiscal Year 2005*

Section 101 sets forth specific sums authorized to be appropriated to carry out the activities of the Department of Justice for Fiscal Year 2005. These sums are set out in 22 accounts. The numbers generally reflect the President's budget requests for the Department of Justice for Fiscal Year 2004 with a 2% inflation adjustment.

*Section 102. Authorization of Appropriations for Fiscal Year 2006*

Section 102 sets forth specific sums authorized to be appropriated to carry out the activities of the Department of Justice for Fiscal Year 2006. These sums are set out in 22 accounts. The numbers generally reflect the President's budget requests for the Department of Justice for Fiscal Year 2005 in Section 101 with a 2% inflation adjustment.

*Section 103. Authorization of Appropriations for Fiscal Year 2007*

Section 103 sets forth specific sums authorized to be appropriated to carry out the activities of the Department of Justice for Fiscal Year 2007. These sums are set out in 20 accounts. The numbers generally reflect the numbers for Fiscal Year 2006 in section 102 with a 2% inflation adjustment.

TITLE II—IMPROVING THE DEPARTMENT OF JUSTICE'S GRANT PROGRAMS

Subtitle A—Assisting Law Enforcement and Criminal Justice Agencies

*Section 201. Merger of Byrne Grant and Local Law Enforcement Block Grant Programs*

Section 201 merges the current Byrne Grant Program (both formula and discretionary) and the Local Law Enforcement Block Grant Programs into one new Edward Byrne Memorial Justice Assistance Grant Program. This will allow states and local governments to make one application for this money annually for a four-year term.

The formula for distributing these grants combines elements of the current Byrne and LLEBG formulas. For allocating money to the states, each state automatically receives 0.25% of the total.

Of the remaining amount, 50% is divided up among the states according to population (the method currently used under Byrne) and 50% is divided up based on the violent crime rate (the method currently used under LLEBG).

Each state's allocation is then divided among state and locals in the following manner. Sixty percent of the allocation goes to the state. Then, that 60% is divided between state and locals based on their relative percentages of overall criminal justice spending within the state. The state keeps its portion of the 60% and gives out the local portion in the state's discretion. This follows how Byrne formula grants are now done.

The remaining 40% of the state's allocation goes directly to the local governments from OJP. Each class of local governments (e.g., cities, counties, townships, etc.) gets a share based on its relative percentage of local criminal justice spending within the state. Within each class, the class's share is divided up between the local governments in that class based on their crime rate. This is similar to how LLEBG grants are now done.

The bill authorizes $1.075 billion for FY 2005 for the program which represents a 2% increase over the amount appropriated for both programs in Fiscal Year 2003. A new feature of the program is that states will be allowed to keep grant funds in interest bearing accounts until spent and then keep the interest. However, all money must be spent during the four-year grant period.

*Section 202. Clarification of Official To Be Consulted by Attorney General in Considering Application for Emergency Federal Law Enforcement Assistance*

Section 202 amends the Emergency Federal Law Enforcement Assistance program (42 U.S.C. Sec. 10501 et seq.) to clarify that in awarding grants under this program the Attorney General shall consult with the Assistant Attorney General for the Office of Justice Programs rather than the Director of the Office of Justice Assistance. This change simply brings the statute into conformity with the existing chain of command in the Department.

*Section 203. Clarification of Uses for Regional Information Sharing System Grants*

Section 203 amends the authorization for the Regional Information Sharing System (42 U.S.C. Sec. 3796h) to clarify its regional character and its authority to establish and maintain a secure telecommunications backbone.

*Section 204. Authorization of Appropriations for the Regional Information Sharing System Grants to facilitate Federal-State-Local Law Enforcement Response Related to Terrorist Attacks*

Section 204 reauthorizes the Regional Information Sharing System for FY 2005–2007 at $100 million each year.

*Section 205. Integrity and Enhancement of National Criminal Record Databases*

Section 205 amends the authorizing statute for the Bureau of Justice Statistics (42 U.S.C. Sec. 3732): (1) to clarify that the Director shall be responsible for the integrity of data and statistics and the prevention of improper or illegal use or disclosure; (2) to provide specific authorization for the already existing National Criminal History Background Check System, the National Incident-Based Reporting System, and the records of the National Crime Information Center and to facilitate state participation in these systems; and (3) to facilitate data-sharing agreements between the Bureau of Justice Statistics and other federal agencies.

*Section 206. Extension of Crime Free Rural States Grant Program*

Section 206 reauthorizes the Crime Free Rural States Grant program for FY 2005–2007.

Subtitle B—Building Community Capacity to Prevent, Reduce, and Control Crime

*Section 211. Office of Weed and Seed Strategies*

Section 211 creates a new Office of Weed and Seed Strategies. This office will replace the current Executive Office of Weed and Seed, and for the first time, this program will have a specific authorization.

Subtitle C—Assisting Victims of Crime

*Section 221. Grants to Local Nonprofit Organizations to Improve Outreach Services to Victims of Crime*

Section 221 amends the crime victim assistance grants program to allow grants of less than $10,000 to be made to smaller neighborhood and community-based victim service organizations. Currently, grants under this program tend to go to larger organizations, and this amendment simply emphasizes that some of the money spent in this program should go to smaller organizations as well.

*Section 222. Clarification and Enhancement of Certain Authorities Relating to Crime Victims Fund*

Section 222 makes several minor adjustments to the authorities relating to the Crime Victims Fund.

Subsection 222(1) clarifies that the fund may only accept gifts, donations, or bequests if they do not attach conditions inconsistent with applicable laws or regulations and if they do not require the expenditure of appropriated funds that are not available to the Office of Victims of Crime. Current law establishes a $50 million antiterrorism reserve within the fund. Each year that reserve may be replenished by using up to 5% of the money in the fund that was not otherwise expended during that year.

Subsection 222(2) permits replenishments of the Antiterrorism Emergency Reserve based upon amounts ''obligated'' rather than amounts actually ''expended'' in any given fiscal year.

Subsection 222(3) allows the Assistant Attorney General to direct the use of the funds available for Indian child abuse program grants under 42 U.S.C. Sec. 10601(g) and to use 5% of those funds for grants to Indian tribes to establish victim assistance programs.

Subsection 222(4) clarifies that the Antiterrorism Emergency Reserve may be replenished only once each fiscal year, rather than be continually replenished as amounts are obligated or expended. It also ensures that no AER funds are included in limitations on annual Crime Victims Fund obligations.

*Section 223. Amounts Received Under Crime Victim Grants May Be Used by State for Training Purposes*

Section 223 amends the grant programs for victim compensation and victim assistance to allow the states part of the reserved amount for administrative costs for training purposes.

*Section 224. Clarification of Authorities Relating to Violence Against Women Formula and Discretionary Grant Programs*

Section 224 makes several clarifications to the program to fund grants to combat violent crimes against women. Subsection 224(a) clarifies that grants may be used for victim services. Subsection 224(b) corrects an incorrect section number reference in last Congress' DOJ authorization bill. Subsection 224(c) clarifies that grants under the program can be made to Indian tribal domestic violence coalitions and corrects other technical errors and makes conforming changes. Subsection 224(d) changes the reporting requirement on the program from annual to biennial.

Subsection 224(e) clarifies that state and tribal governments may use grant funds under the program to pay for forensic medical exams for sexual assault victims so long as the victims are not required to seek reimbursement from their insurers. It further provides that the victim shall not be required to participate in the criminal justice system or cooperate with law enforcement in order to be provided with a forensic medical exam, reimbursement for such exam, or both. Subsection 224(f) makes a technical amendment to the heading for this part of the Code.

*Section 225. Expansion of Grant Programs Assisting Enforcement of Domestic Violence Cases To Also Assist Enforcement of Sexual Assault Cases*

Section 225 amends the programs to provide grants to encourage domestic violence arrest policies and to provide assistance for rural domestic violence and child abuse enforcement to clarify that such grants can also be used to assist enforcement of sexual assault cases.

Subtitle D—Preventing Crime

*Section 231. Clarification of Definition of Violent Offender for Purposes of Juvenile Drug Courts*

Section 231 amends the juvenile drug court grant program so that offenders who are convicted of a violent misdemeanor may participate in the program. Currently, misdemeanor offenders may participate only if their offense is non-violent.

*Section 232. Eligibility for Grants Under Drug Court Grants Program Extended to Courts That Supervise Non-Offenders With Substance Abuse Problems*

Section 232 amends the drug court program to allow continuing supervision over non-violent offenders as well as other related persons who may be before the court. This will allow a drug court to consolidate the cases of related individuals who may be under its jurisdiction at one time and supervise them jointly.

*Section 233. Terms of Residential Substance Abuse Treatment Program for Local Facilities*

Section 233 amends the Residential Substance Abuse Treatment for State Prisoners program to clarify that the grants should go to local correctional facilities and detention facilities where prisoners are held long enough to carry out a 3-month course of drug treatment.

*Section 234. Rural 9–1–1 Service*

Section 234 authorizes the Attorney General to provide grants for access to, and improvements on a communications infrastructure that will ensure a reliable and seamless communication between, law enforcement, fire, and emergency medical service providers in units of local government and tribal governments located outside a Standard Metropolitan Statistical Area and in States.

*Section 235. Methamphetamine Cleanup*

Section 235 authorizes the Methamphetamine Cleanup program. The program funds the cleanup of methamphetamine laboratories and related hazardous waste, and provides additional contract personnel, equipment, and facilities to local governments.

*Section 236. National Citizens Crime Prevention Campaign*

Section 236 authorizes the National Citizens Crime Prevention Campaign for FY 2005–2007 and requires a 30% non-Federal match for all Federal funds.

*Section 237. SEARCH, the National Consortium for Justice Information and Statistics*

Section 237 authorizes the Bureau of Justice Assistance to award a grant to SEARCH, the National Consortium for Justice Information and Statistics to perform its functions under the direction of the Office of Justice Programs.

Subtitle E—Other Matters

*Section 241. Changes to Certain Financial Authorities*

Subsection 241 (a) raises from 3 to 6 percent the amount of money collected from civil debt collection activities that can be credited to the Working Capital Fund established under 28 U.S.C. Sec. 527.

Subsection 241 (b) exempts the Southwest Border Initiative from the requirement that it reimburse the Treasury for untimely payments and the requirement that it pay interest to states for untimely payments.

Subsections 241(c) and (d) update certain general law enforcement authorities of the Attorney General to include the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

*Section 242. Coordination Duties of Assistant Attorney General*

Subsection 242(a) amends the authorizing statute for OJP to include the Office for Victims of Crime within the list of OJP bureaus. Subsection 242(b) allows the Assistant Attorney General to place special conditions on all grants.

*Section 243. Repeal of Certain Programs*

Section 243 repeals seven grant programs that have been authorized, but have largely not been funded in recent years: the Criminal Justice Facility Construction Pilot Program; the Family Support Program; the Matching Grant Program for School Security; the Local Crime Prevention Block Grant Program; the Assistance for Delinquent and At-Risk Youth Program; and the Improved Training and Technical Automation Program; the Other State and Local Aid Program.

*Section 244. Elimination of Certain Notice and Hearing Requirements*

Section 244 eliminates the requirement that OJP must provide notice and a hearing for grant applicants whose applications are denied. It further eliminates the opportunity for appellate review of the decisions arising from such hearings. These rights are rarely used.

*Section 245. Amended Definitions for Purposes of Omnibus Crime Control and Safe Streets Act of 1968*

Section 245 broadens the definition of the term ''Indian Tribe'' to allow more tribes to be treated as units of local government for purposes of OJP grants. It broadens the definition of the term ''combination'' of State and local governments to include those who jointly plan. It amends the definition of the term ''neighborhood or community-based organizations'' to clarify that it includes faith-based organizations.

*Section 246. Clarification of Authority To Pay Subsistence Payments to Prisoners for Health Care Items and Services*

Under current law, the Attorney General is required to pay for health care items and services for certain prisoners in the custody of the United States. In every instance, he must not pay more than the lesser of what the Medicare or Medicaid program would pay. This requires the Attorney General to expend a great deal of effort to determine that in each case. This subsection changes that to simply say that he shall not pay more than the Medicare rate. It also substitutes the Department of Homeland Security for a reference to the now defunct Immigration and Naturalization Service.

*Section 247. Consolidation of Financial Management Systems of Office of Justice Programs*

Section 247 requires the Assistant Attorney General of the Office of Justice Programs to make two significant financial management reforms: (1) consolidate all accounting activities of OJP into a single financial management system under the direct management of the Office of the Comptroller by September 30, 2010, and (2) consolidate all procurement activities of OJP into a single procurement system under the direct management of the Office of Administration by September 30, 2007.

The Assistant Attorney General is required to begin the consolidation of accounting activities under the Office of the Comptroller and the consolidation of procurement activities under the Office of Administration not later than October 1, 2003. The Office of Administration is to begin the consolidation of procurement operations and financial management systems into a single financial system not later than September 30, 2005.

*Section 248. Authorization and Change of COPS program to single grant program*

Section 248 reauthorizes the COPS program while restructuring it as one single block grant program covering all of its current purposes so local governments will need only to file one COPS application for any of these purposes.

*Section 249. Enhanced Assistance for Criminal Investigations and Prosecutions by State and Local Law Enforcement Officials*

Section 249 enhances assistance for criminal investigations and prosecutions by requiring the Attorney General to provide federal assistance upon request by a state, local or Indian tribe governments.

TITLE III—COMBATING MONEY LAUNDERING AND TERRORIST FINANCING ACT OF 2004

*Section 301. Short Title*

Section 301 authorizes that this bill may be cited as the ''Combating Money Laundering and Terrorist Financing Act of 2003''.

*Section 302. Specified Activities for Money Laundering*

Amends the Racketeer Influenced and Corrupt Organizations Act (RICO) to expand its scope to cover acts or threats involving burglary, embezzlement, and fraud in the purchase of securities. Modifies provisions regarding: (1) the laundering of monetary instruments to include violations of the Social Security Act relating to obtaining funds through misuse of a social security number, to grant authority to the Secretary of Homeland Security and the Commissioner of Social Security over offenses within their jurisdictions, and to cover certain informal transfers of the proceeds of specified unlawful activity; and (2) engaging in monetary transactions in property derived from specified unlawful activity to grant authority to the Secretary over offenses within his jurisdiction.

*Section 303. Illegal Money Transmitting Businesses*

Changes the name of a money transmitting business the operation of which is prohibited from an ''unlicensed'' to an ''illegal'' money transmitting business. Specifies that such a business shall be illegal if it fails to comply with money transmitting business registration requirements (current law), whether or not the defendant knew that the operation was required to comply with such requirements. Authorizes the Attorney General, the Secretary of the Treasury, and the Secretary of Homeland Security to investigate violations regarding such businesses.

*Section 304. Assets of Persons Committing Terrorist Acts Against Foreign Countries or International Organizations*

Amends the Federal criminal code to provide for civil forfeiture of the assets of individuals or entities engaging in planning or perpetrating any act of international terrorism against any international organization or foreign government.

*Section 305. Money Laundering through Informal Value Transfer Systems*

Section 305 amends the Federal criminal code to include as money laundering unlawful transactions where one part of such plan or arrangement actually involves the proceeds of specified unlawful activity.

*Section 306. Technical Corrections to Financing of Terrorism Statute*

Section 306 amends 18 USC 2339(c) to change the definition of concealment and other minor changes.

*Section 307. Miscellaneous and Technical Amendments*

Section 307 amends 18 USC 982(b), 18 USC 1510(b)(3)(B) and adds technical amendments Sections 1956, 1957.

*Section 308. Extension of the Money Laundering and Financial Crimes Strategy Act of 1998*

Reauthorizes the Money Laundering and Financial Crimes Strategy Act of 1998 through years 2004, 2005, and 2006.

TITLE IV—PREVENTION AND RECOVERY OF MISSING CHILDREN ACT OF 2004

*Section 401. Short Title*

This Title may be called the ''Prevention and Recovery of Missing Children Act of 2004.''

*Section 402. Findings*

*Section 403. Missing Child Reporting Requirements*

Section 403 stops the practice of removing a missing child entry from the NCIC database when the child reaches age 18 to increase the chances for child recovery and investigative information available for other cases. It also requires that a missing child be entered into NCIC within 2 hours of receipt.

*Section 404. Standards for Sex Offender Registration Programs*

Section 404 requires that (1) a state register sex offenders before they are released from prison; (2) the registering agency obtain current fingerprints and a photograph (annually), as well as a DNA sample, from an offender at the time of registration; (3) registrants obtain either a driver's license or an identification card from the department of motor vehicles; (4) registration changes occur within 10 days of the changes taking effect; (5) all registered sex offenders verify their registry information every 90 days; and (6) states inform another state when a known registered person is moving into its jurisdiction. This section also creates a felony designation for the crime of non-compliance with the registration requirements.

*Section 405. Effective Date*

The provisions in this title will go into effect 2 years after this bill is signed into law.

TITLE V—BULLETPROOF VEST PARTNERSHIP GRANT ACT OF 2004

*Section 501. Short Title*

This title may be called the ''Bulletproof Vest Partnership Grant Act of 2004.''

*Section 502. Authorization of Appropriations*

Amends the Omnibus Crime Control and Safe Streets Act of 1968 to extend through FY 2007 the authorization of appropriations for the Bulletproof Vest Partnership Grant Program (a matching grant program which helps State, tribal, and local jurisdictions purchase armor vests for use by law enforcement officers).

TITLE VI—PACT ACT

*Section 601. Short Title*

This title may be called the ''Prevent All Cigarette Trafficking Act'' or ''PACT Act.''

*Section 602. Collection of State Cigarette Taxes*

This section increases the ability of state, local, and tribal governments to collect excise taxes from cigarette and smokeless tobacco sales by strengthening the Jenkins Act, which requires reporting of interstate cigarette sales. Jenkins now explicitly includes cigarette and smokeless tobacco sales made via phone, Internet or mail. Delivery sellers must report interstate sales, including those to distributors, to state, local, and tribal governments, as well as list all Jenkins requirements on the bill of lading, and maintain records of all delivery sales. Delivery sales may not be made until excise tax stamps are applied. Violators of Jenkins are subject to felony prosecution and civil penalties. State, local and tribal governments, as well as tobacco manufacturers may prevent and restrain violations of Jenkins in U.S. district courts, in addition to their respective jurisdictions.

*Section 603. Treatment of Cigarettes as Nonmailable Matter*

This section prohibits a person from sending cigarettes and smokeless tobacco via the U.S. Postal Service in the continental United States.

*Section 604. Penal Provisions Regarding Trafficking in Contraband Cigarettes*

Under the amended Contraband Cigarette Trafficking Act (''CCTA''), the threshold amount of non-excise tax-paid cigarettes is lowered to 10,000. CCTA covers smokeless tobacco if the quantity exceeds 500 singleunits. Monthly reports must be filed detailing transactions and inventory with the Attorney General and Secretary of Treasury, as well as with state and tribal authorities as appropriate, if monthly delivery sales exceed these contraband thresholds. Seized cigarettes and smokeless tobacco may be used for undercover law enforcement operations. State, local and tribal governments, as well as tobacco manufacturers may prevent and restrain violations of the CCTA in U.S. district courts, in addition to their respective jurisdictions.

*Section 605. Compliance with Model Statute or Qualifying Statute*

This section prohibits tobacco manufacturers and importers from participating in transactions occurring in states party to the Master Settlement Agreement (''MSA''), which involve cigarettes manufactured by companies that are not in compliance with the ''qualifying statute'' of the particular MSA state. These statutes require that states neutralize the cost disadvantages of the manufacturers that entered into the MSA due to their escrow payments. State attorneys general may bring actions in the United States district courts to prevent and restrain violations of this section.

*Section 606. Undercover Criminal Investigations of the Bureau of Alcohol, Tobacco, Firearms and Explosives*

This section grants BATFE the authority to offset expenses incurred in undercover operations by revenue obtained from the same operation. This will enhance their ability to conduct sting operations. BATFE is also empowered to inspect the records and premises of those who ship, sell, distribute, or receive in interstate commerce any quantity in excess of the contraband threshold, within a single month.

*Section 607. Inspection by the Bureau of Alcohol, Tobacco, Firearms and Explosives of Records of Certain Cigarette Sellers*

This section empowers the BATFE to inspect the records and premises of those who ship, sell, distribute, or receive in interstate commerce any quantity in excess of the contraband threshold, within a single month.

*Section 608. Compliance with Tariff Act of 1930*

*Section 609. Exclusions Regarding Indian Tribes and Tribal Matters*

*Section 610. Effective Date*

The new authority granted to the BATFE is effective immediately. All other changes are effective 90 days after enactment.

TITLE VII—CREATE ACT

*Section 701. Short Title*

Section 701 authorizes that this bill may be cited as the ''Cooperative Research and Technology Enhancement (CREATE) Act of 2004.''

*Section 702. Collaborative Efforts on Claimed Inventions*

Section 702 amends Federal patent and trademark law to deem subject matter developed by another person and a claimed invention to have been owned by the same person or subject to an obligation of assignment to the same person, for purposes of provisions that treat inventions of a common owner similarly to inventions made by a single person, if: (1) the claimed invention was made by or on behalf of parties to a joint research agreement (agreement) that was in effect on or before the date the claimed invention was made; (2) the claimed invention was made as a result of activities undertaken within the scope of the agreement; and (3) the application for patent for the claimed invention discloses, or is amended to disclose, the names of the parties to the agreement.

*Section 703. Effective Date*

Section 703 applies the CREATE Act to any patents issued after its enactment and does not apply to any pending action before the courts or the Patent and Trademark Office.

TITLE VIII—PROTECTING INTELLECTUAL RIGHTS AGAINST THEFT AND EXPROPRIATION ACT OF 2004

*Section 801. Short Title*

Section 801 authorizes that this bill may be cited as the ''Protecting Intellectual Rights Against Theft and Expropriation Act of 2004''.

*Section 802. Authorization of Civil Copyright Enforcement by Attorney General*

Section 802 amends Federal copyright law to authorize the Attorney General (AG) to: (1) commence a civil action against any person who engages in conduct constituting copyright infringement; (2) collect damages and profits resulting from such infringement; and (3) collect

*Section 803. Authorization of Funding for Training and Pilot Program*

Section 803 directs the Attorney General to: (1) develop a program to ensure effective implementation and use of the authority for civil enforcement of the copyright laws, including training programs for qualified personnel from the Department of Justice and United States Attorneys Offices; and (2) report annually to Congress on the use of such enforcement authority and progress made in implementing the training programs.

Authorizes appropriations for FY 2005.

TITLE IX—KOBY MANDELL ACT OF 2004

*Section 901. Short Title*

*Section 902. Definitions*

*Section 903. Establishment of an Office of Justice for Victims of Overseas Terrorism in the Department of Justice*

Section 903 creates within the DOJ an Office of Justice for Victims of Overseas Terrorism which will assume the responsibility for administration of the Rewards for Justice Program and its website. These offices will offer rewards to capture all terrorists involved in harming American citizens overseas as well as other related services including sending US officials to funerals of American victims of terrorism overseas.

Included in this section are reporting requirements to Congress and monitoring of actions by governments and regimes pertaining to terrorists who have harmed American citizens. This section also requires the Office to initiate negotiations to secure compensation for American citizens or their families who were harmed by organizations who claim responsibility for the acts of terrorism.

The Office will also be required to monitor the incarceration abroad of terrorists who have harmed American citizens overseas to ensure their incarceration is similar to that condition of incarceration in the United States. As well, this section requires that all terrorists who have harmed Americans overseas are treated by the US government as persona non grata.

*Section 904. Authorization of Appropriations*

Section 904 authorizes for 2005–2007 such sums as may be necessary to carry out this title.

TITLE X—SENIOR SAFETY ACT OF 2004

*Section 1001. Short Title*

The title may be cited as the ''Seniors Safety Act of 2004.''

*Section 1002. Findings and Purposes*

This section enumerates 14 findings on the incidence of crimes against seniors, the large percentages of seniors who can expect to spend time in nursing homes, the amount of Federal money spent on nursing home care and the estimated losses due to fraud and abuse in the health care industry.

The purposes of the Act are to enhance safeguards for pension plans and health benefit programs, prevent and deter criminal activity that results in economic and physical harm to seniors, and ensure appropriate restitution.

*Section 1003. Definitions*

Definitions are provided for the following terms: (1) ''Crime'' is defined as any criminal offense under Federal or State law; and (2) ''Senior'' is defined as an individual who is older than 55.

Subtitle A—Combating Crimes Against Seniors

*Section 1011. Enhanced Sentencing Penalties Based on Age of Victim*

Directive to the United States Sentencing Commission. The U.S. Sentencing Commission is directed to review and, if appropriate, amend the sentencing guidelines applicable to the age or a victim.

*Section 1012. Study and Report on Health Care Fraud Sentences*

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION. The U.S. Sentencing Commission is directed to review and, if appropriate, amend the sentencing guidelines applicable to health care fraud offenses.

(b) REQUIREMENTS. During its review, the Sentencing Commission shall: ensure that the guidelines reflect the serious harms associated with health care fraud and the need for law enforcement to prevent such fraud;

consider enhanced penalties for persons convicted of health care fraud; consult with representatives of industry, judiciary, law enforcement, and victim groups; account for mitigating circumstances; assure reasonable consistency with other relevant directives and guidelines; make any necessary conforming changes; and assure that the guidelines adequately meet the purposes of sentencing.

(c) REPORT. The Sentencing Commission shall report the results of the review required under (a) and include any recommendations for retention or modification of the current penalty levels for health care fraud offenses, by December 31, 2004.

*Section 1013. Increased Penalties for Fraud Resulting in Serious Injury or Death*

This section increases the penalties under the mail fraud statute, 18 U.S.C. §1341, and the wire fraud statute, 18 U.S.C. §1343, for fraudulent schemes that result in serious injury or death. Existing law provides such an enhancement for a narrow class of health care fraud schemes (see 18 U.S.C. 1347). This provision would extend this penalty enhancement to other forms of fraud under the mail and wire fraud statutes that result in death or serious injury. The maximum penalty if serious bodily harm occurred would be up to twenty years; if a death occurred, the maximum penalty would be a life sentence.

*Section 1014. Safeguarding Pension Plans From Fraud and Theft*

(a) IN GENERAL. This section would add new section 1351 to title 18, United States Code.

§1351: Fraud in Relation to Retirement Arrangements.

(a) This section defines retirement arrangements and provides an exception for plans established by the Employee Retirement Income Security Act (ERISA).

(b) This section punishes, with up to ten years' imprisonment, the act of defrauding retirement arrangements, or obtaining by means of false or fraudulent pretenses money or property of any retirement arrangement. Retirement arrangements would include employee pension benefit plans under the Employee Retirement Income Security Act (ERISA), qualified retirement plans under section 4974(c) of the Internal Revenue Code (IRC), medical savings accounts under section 220 of the IRC, and funds established within the Thrift Savings Fund. This provision is modeled on existing statutes punishing bank fraud (see 18 U.S.C. §1344) and health care fraud (see 18 U.S.C. §1347). Any government plan defined under section 3(32) of title I of the ERISA, except funds established by the Federal Retirement Thrift Investment Board, is exempt from this section.

(c) The Attorney General is given authority to investigate offenses under the new section, but this authority expressly does not preclude other appropriate Federal agencies, including the Secretary of Labor, from investigating violations of ERISA.

(b) CONFORMING AMENDMENT. The table of sections for chapter 63 of title 18 United States Code, is modified to list new section ''1351. Fraud in relation to retirement arrangements.''

*Section 1015. Additional Civil Penalties for Defrauding Pension Plans*

(a) IN GENERAL. This section would authorize the Attorney General to bring a civil action for a violation, or conspiracy to violate, new section 18 U.S.C. §1351, relating to retirement fraud. Proof of such a violation established by a preponderance of the evidence would subject the violator to a civil penalty of the greater of the amount of pecuniary gain to the offender, the pecuniary loss to the victim, or up to $50,000 in the case of an individual, or $100,000 for an organization. Imposition of this civil penalty has no effect on other possible remedies.

(b) EXCEPTION. No civil penalties would be imposed for conduct involving an employee pension plan subject to penalties under ERISA, 29 U.S.C. §1132.

(c) DETERMINATION OF PENALTY AMOUNT. In determining the amount of the penalty, the court is authorized to consider the effect of the penalty on the violator's ability to restore all losses to the victims and to pay other important tax or criminal penalties.

*Section 1016. Punishing Bribery and Graft in Connection with Employee Benefit Plans*

This section would amend section 1954 of title 18, United States Code, by changing the title to ''Bribery and graft in connection with employee benefit plans,'' and increasing the maximum penalty for bribery and graft in regard to the operation of an employee benefit plan from 3 to 5 years imprisonment. This section also broadens existing law under section 1954 to cover corrupt attempts to give or accept bribery or graft payments, and to proscribe bribery or graft payments to persons exercising de facto influence or control over employee benefit plans. Finally, this amendment clarifies that a violation under section 1954 requires a showing of corrupt intent to influence the actions of the recipient of the bribe or graft.

Subtitle B—Preventing Telemarketing Fraud

*Section 1021. Centralized Complaint and Consumer Education Service for Victims of Telemarketing Fraud*

(a) CENTRALIZED SERVICE. This section directs the Commissioner of the Federal Trade Commission to log the receipt of calls complaining about telemarketing fraud and provide information on telemarketing fraud to such individuals. The FTC is also authorized to provide civil or criminal law enforcement information about specific companies.

(b) FRAUD CONVICTION DATA. The Attorney General is directed to provide information about corporations and companies that are the subject of civil or criminal law enforcement action for telemarketing fraud, under Federal and state law, to the FTC in electronic format, so that the FTC can enter the information into a database maintained in accordance with section (a).

(c) AUTHORIZATION OF APPROPRIATIONS. Authorization is provided for such sums as are necessary to carry out the section.

*Section 1022. Blocking of Telemarketing Scams*

(a) EXPANSION OF SCOPE OF TELEMARKETING FRAUD SUBJECT TO ENHANCED CRIMINAL PENALTIES. Section 2325 of title 18, United States Code, is amended by replacing the term ''telephone calls'' with ''wire communication utilizing a telephone service'' to clarify that telemarketing fraud schemes executed using cellular telephone services are subject to the enhanced penalties for such fraud under 18 U.S.C. §2326.

(b) BLOCKING OR TERMINATION OF TELEPHONE SERVICE ASSOCIATED WITH TELEMARKETING FRAUD. This section adds new section 2328 to title 18, United States Code, to authorize the termination of telephone service used to carry on telemarketing fraud, and is similar to the legal authority provided under 18 U.S.C. §1084(d), regarding termination of telephone service used to engage in illegal gambling. The new section 2328 requires telephone companies, upon notification in writing from the Department of Justice that a particular phone number is being used to engage in fraudulent telemarketing or other fraudulent conduct, and after notice to the customer, to terminate the subscriber's telephone service. The common carrier is exempt from civil and criminal penalties for any actions taken in compliance with any notice received from the Justice Department under this section. Persons affected by termination may seek an appropriate determination in Federal court that the service should not be discontinued or removed, and the court may direct the Department of Justice to present evidence supporting the notification of termination. Definitions are provided for ''wire communication facility'' and ''reasonable notice to the subscriber.''

TITLE XI—FEDERAL PROSECUTORS RETIREMENT BENEFIT EQUITY ACT OF 2004

*Section 1101. Short Title*

This title may be called the ''Federal Prosecutors Retirement Benefit Equity Act.''

*Section 1102. Retirement Treatment of Federal Prosecutors*

Amends the definition of law enforcement officer to include prosecutors for retirement purposes.

*Section 1103. Provisions Relating to Incumbents*

Defines ''federal prosecutor'' to include assistant United States Attorneys and attorneys at the Department of Justice designated by the Attorney General under the conditions set out in this title. The change takes effect upon enactment of the bill. This section also sets a time limit for the attorneys to elect to opt out.

*Section 1104. Department of Justice Administrative Actions*

Directs the Attorney General to consult with the Office of Personnel Management on this title and make regulations.

TITLE XII—ANTI-ATROCITY ALIEN DEPORTATION ACT OF 2004

*Section 1201. Short Title*

This title may be cited as the ''Anti-Atrocity Alien Deportation Act of 2004.''

*Section 1202. Inadmissibility and Deportability of Aliens Who Have Committed Acts of Torture or Extrajudicial Killing Abroad*

Currently, the Immigration and Nationality Act (INA) provides that (i) participants in Nazi persecutions during the time period from March 23, 1933 to May 8, 1945, and (ii) aliens who engaged in genocide, are inadmissible to the United States. See 8 U.S.C. §1182(a)(3)(E)(i) and (ii). Current law also provides that aliens who have participated in Nazi persecutions or engaged in genocide are deportable. See §1227(a)(4)(D). The bill would amend these sections of the INA by expanding the grounds for inadmissibility and deportation to cover aliens who have committed, ordered, incited, assisted, or otherwise participated in the commission of acts of torture or extrajudicial killing abroad and clarify and expand the scope of the genocide bar.

Subsection (a) would first amend the definition of ''genocide'' in clause (ii) of section 212(a)(3) of the INA, 8 U.S.C. 1182(a)(3)(E)(ii). Currently, the ground of inadmissibility relating to genocide refers to the definition in the Convention on the Prevention and Punishment of the Crime of Genocide. Article III of that Convention punishes genocide, the conspiracy to commit genocide, direct and public incitement to commit genocide, attempts to commit genocide, and complicity in genocide. The bill would modify the definition to refer instead to the ''genocide'' definition in section 1091 (a) of title 18, United States Code, which was adopted to implement United States obligations under the Convention and also prohibits attempts and conspiracies to commit genocide.

Specifically, section 1091 (a) defines genocide as ''whoever, whether in time of peace or in time of war, . . . with the specific intent to destroy, in whole or in substantial

part, a national, ethnic, racial or religious group as such: (1) kills members of that group; (2) causes serious bodily injury to members of that group; (3) causes the permanent impairment of the mental faculties of members of the group through drugs, torture, or similar techniques; (4) subjects the group to conditions of life that are intended to cause the physical destruction of the group in whole or in part; (5) imposes measures intended to prevent births within the group; or (6) transfers by force children of the group to another group.'' This definition includes genocide by public or private individuals in times of peace or war. While the federal criminal statute is limited to those offenses committed within the United States or offenders who are U.S. nationals, see 18 U.S.C. 1091(d), the grounds for inadmissibility in the bill would apply to such offenses committed outside the United States that would otherwise be a crime if committed within the United States or by a U.S. national.

In addition, the bill would broaden the reach of the inadmissibility bar to apply not only to those who ''engaged in genocide,'' as in current law, but also to cover any alien who has ordered, incited, assisted or otherwise participated in genocide abroad. This broader scope will ensure that the genocide provision addresses a more appropriate range of levels of complicity.

Second, subsection (a) would add a new clause to 8 U.S.C. §1182(a)(3)(E) that would trigger operation of the inadmissibility ground if an alien has ''committed, ordered, incited, assisted, or otherwise participated in'' acts of torture, as defined in section 2430 of title 18, United States Code, or extrajudicial killings, as defined in section 3(a) the Torture Victim Protection Act. The statutory language—''committed, ordered, incited, assisted, or otherwise participated in''—is intended to reach the behavior of persons directly or personally associated with the covered acts, including those with command responsibility. Command responsibility holds a commander responsible for unlawful acts when (1) the forces who committed the abuses were subordinates of the commander (i.e., the forces were under his control either as a matter of law or as a matter of fact); (2) the commander knew, or, in light of the circumstances at the time, should have known, that subordinates had committed, were committing, or were about to commit unlawful acts; and (3) the commander failed to prove that he had taken the necessary and reasonable measures to (a) prevent or stop subordinates from committing such acts, or (b) investigate the acts committed by subordinates in a genuine effort to punish the perpetrators. Attempts and conspiracies to commit these crimes are encompassed in the ''otherwise participated in'' language. This language addresses an appropriate range of levels of complicity for which aliens should be held accountable, and has been the subject of extensive judicial interpretation and construction. See *Fedorenko* v. *United States*, 449 U.S. 490, 514 (1981); *Kalejs* v.*INS*, 10 F.3d 441, 444 (7th Cir. 1993); *U.S.* v. *Schmidt*, 923 F. 2d 1253, 1257–59 (7th Cir. 1991); *Kulle* v. *INS*, 825 F. 2d 1188, 1192 (7th Cir. 1987).

The definitions of ''torture'' and ''extrajudicial killing'' are contained in the Torture Victim Protection Act, which served as the implementing legislation when the United States joined the United Nations' ''Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.'' This Convention entered into force with respect to the United States on November 20, 1992 and imposes an affirmative duty on the United States to prosecute torturers within its jurisdiction. The Torture Victim Protection Act provides both criminal liability and civil liability for persons who, acting outside the United States and under actual or apparent authority, or color of law, of any foreign nation, commit torture or extrajudicial killing.

The criminal provision passed as part of the Torture Victim Protection Act defines ''torture'' to mean ''an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control.'' 18 U.S.C. §2340(1). ''Severe mental pain or suffering'' is further defined to mean the ''prolonged mental harm caused by or resulting from (A) the intentional infliction or threatened infliction of severe physical pain or suffering; (B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality; and (C) the threat of imminent death; or (D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality.'' 18 U.S.C. §2340(2).

The bill also incorporates the definition of ''extrajudicial killing'' from section 3(a) of the Torture Victim Protection Act. This law establishes civil liability for wrongful death against any person ''who, under actual or apparent authority, or color of law, of any foreign nation . . . subjects an individual to extrajudicial killing,'' which is defined to mean ''a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. Such term, however, does not include any such killing that, under international law, is lawfully carried out under the authority of a foreign nation.''

Both definitions of ''torture'' and ''extrajudicial killing'' require that the alien be acting under color of law. A criminal conviction, criminal charge or a confession are not required for an alien to be inadmissible or removable under the new grounds added in this subsection of the bill.

The final paragraph in subsection (a) would modify the subparagraph heading to clarify the expansion of the grounds for in admissibility from ''participation in Nazi persecution or genocide'' to cover ''torture or extrajudicial killing.''

Subsection (b) would amend section 237(a)(4)(D) of the INA, 8 U.S.C. §1227(a)(4)(D), which enumerates grounds for deporting aliens who have been admitted into or are present in the United States. The same conduct that would constitute a basis of inadmissibility under subsection (a) is a ground for deportability under this subsection of the bill. Under current law, assisting in Nazi persecution and engaging in genocide are already grounds for deportation. The bill would provide that aliens who have committed any act of torture or extrajudicial killing would also be subject to deportation. In any deportation proceeding, the burden would remain on the government to prove by clear and convincing evidence that the alien's conduct brings the alien within a particular ground of deportation.

Subsection (c) regarding the ''effective date'' clearly states that these provisions apply to acts committed before, on, or after the date this legislation is enacted. These provisions apply to all cases after enactment, even where the acts in question occurred or where adjudication procedures within the Department of Homeland Security (DHS) or the Executive Office of Immigration Review were initiated prior to the time of enactment.

*Section 1203. Inadmissibilty and Deportability of Foreign Government Officials Who Have Committed Particularly Severe Violations of Religious Freedom*

This section of the bill would amend section 212(a)(2)(G) of the INA, 8 U.S.C. §1182(a)(2)(G), which was added as part of the International Religious Freedom Act of 1998 (IFRA), to expand the grounds for inadmissibility and deportability of aliens who commit particularly severe violations of religious freedom. Current law bars the admission of an individual who, while serving as a foreign government official, was responsible for or directly carried out particularly severe violations of religious freedom within the last 24 months. 8 U.S.C. §1182(c)(2)(G). The existing provision also bars from admission the individual's spouse and children, if any. ''Particularly severe violations of religious freedom'' is defined in section 3 of IFRA to mean systematic, ongoing, egregious violation of religious freedom, including violations such as (A) torture or cruel, inhuman, or degrading treatment or punishment; (B) prolonged detention without charges; (C) causing the disappearance of persons or clandestine detention of those persons; or (D) other flagrant denial of the right to life, liberty, or the security of persons. While IRFA contains numerous provisions to promote religious freedom and prevent violations of religious freedom throughout the world, including a wide range of diplomatic sanctions and other formal expressions of disapproval, section 212 (a)(2)(G) is the only provision which specifically targets individual abusers.

Subsection (a) would delete the 24–month restriction in section 212 (a)(2)(G) since it limits the accountability, for purposes of admission, to a two-year period. This limitation is not consistent with the strong stance of the United States to promote religious freedom throughout the world. Individuals who have committed particularly severe violations of religious freedom should be held accountable for their actions and should not be admissible to the United States regardless of when the conduct occurred.

In addition, this subsection would amend the law to remove the current bar to admission for the spouse or children of a foreign government official who has been involved in particularly severe violations of religious freedom. The bar of inadmissibility is a serious sanction that should not apply to individuals because of familial relationships that are not within an individual's control. None of the other grounds relating to serious human rights abuse prevent the spouse or child of an abuser from entering or remaining lawfully in the United States. Moreover, the purpose of these amendments is to make those who have participated in atrocities accountable for their actions. That purpose is not served by holding the family members of such individuals accountable for the offensive conduct over which they had no control.

Subsection (b) would amend section 237(a)(4) of the INA, 8 U.S.C. §1227(a)(4), which enumerates grounds for deporting aliens who have been admitted into or are present in the United States, to add a new clause (E), which provides for the deportation of aliens described in subsection (a) of the bill.

The bill does not change the effective date for this provision set forth in the original IFRA, which applies the operation of the amendment to aliens ''seeking to enter the United States on or after the date of the enactment of this Act.''

*Section 1204. Waiver of Inadmissibility*

Under current law, most aliens who are otherwise inadmissible may receive a waiver

under section 212(d)(3) of the INA to enter the nation as a nonimmigrant, where the Secretary of State recommends it and the Attorney General approves. Participants in Nazi persecutions or genocide, however, are not eligible for such a waiver. Our bill retains that prohibition. It does allow for the possibility, however, of waivers for those who commit acts of torture or extrajudicial killings.

*Section 1205. Bar to Good Moral Character, Asylum and Refugee Status, and Withholding of Removal for Aliens Who Have Committed Acts of Torture, Extrajudicial Killings, or Severe Violations of Religious Freedom*

This section of the bill would amend section 101 (f) of the INA, 8 U.S.C. §1101(f), which defines ''good moral character,'' to make clear that aliens who have committed torture, extrajudicial killing, or severe violation of religious freedom abroad do not qualify. Good moral character is a prerequisite for certain forms of immigration relief, including naturalization, cancellation of removal for nonpermanent residents, and voluntary departure at the conclusion of removal proceedings. Aliens who have committed torture or extrajudicial killing, or severe violations of religious freedom abroad cannot establish good moral character. Accordingly, this amendment prevents aliens covered by the amendments made in sections 2 and 3 of the bill from becoming United States citizens or benefiting from cancellation of removal or voluntary departure. Absent such an amendment there is no statutory bar to naturalization for aliens covered by the proposed new grounds for inadmissibility and deportation.

It would also make aliens who are inadmissible under section 212(a)(3)(E) of the INA, 8 U.S.C. 1182(a)(3)(E), ineligible for asylum, refugee status, or withholding of removal.

*Section 1206. Establishment of the Office of Special Investigations*

Attorney General Civiletti established OSI in 1979 within the Criminal Division of the Department of Justice, consolidating within it all ''investigative and litigation activities involving individuals, who prior to and during World War II, under the supervision of or in association with the Nazi government of Germany, its allies, and other affiliatated [sic] governments, are alleged to have ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion.'' (Att'y Gen. Order No. 85179). The OSI's mission continues to be limited by that Attorney General Order.

Subsection (a) would first amend the INA, 8 U.S.C. §1103, by directing the Attorney General to establish an Office of Special Investigations within the Department of Justice with authorization to denaturalize any alien who has participated in Nazi persecution, genocide, torture or extrajudicial killing abroad. This would not only provide statutory authorization for OSI, but also expand OSI's current authorized mission beyond Nazi war criminals.

The second part of this subsection would require the Attorney General to consult with the Secretary of the Department of Homeland Security before making decisions about prosecution or extradition of the aliens covered by this bill. The third part of this subsection sets forth specific considerations in determining the appropriate legal action to take against an alien who has participated in Nazi persecution, genocide, torture or extrajudicial killing abroad. Significantly, in order to fulfill the United States' obligation under the ''Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment'' to hold accountable torturers found in this country, the bill expressly directs the Department of Justice to consider the availability of prosecution under United States laws for any conduct that forms the basis for removal and denaturalization. In addition, the Department is directed to consider extradition to foreign jurisdictions that are prepared to undertake such a prosecution. Statutory and regulatory provisions to implement Article 3 of the Convention Against Torture, which prohibits the removal of any person to a country where he or she would be tortured, must also be part of this consideration.

Subsection (b) authorizes additional funds for these expanded duties to ensure that OSI fulfills its continuing obligations regarding Nazi war criminals.

*Section 1207. Reports on Implementation of the Act*

This section of the bill would direct the Attorney General, in consultation with the Homeland Security Secretary, to report within six months on implementation of the Act, including procedures for referral of matters to OSI, any revisions made to INS forms to reflect amendments made by the bill, and the procedures developed, with adequate due process protection, to obtain sufficient evidence and determine whether an alien is deemed inadmissible under the bill.

It also requires the Attorney General and the DHS Secretary to report annually on the number of criminal investigations and prosecutions undertaken pursuant to the Act, the number of persons removed from or denied admission to the United States pursuant to the Act, and the nationality of those persons.

## TITLE XIII—PROMISE ACT

*Section 1301. Short Title*

This title may be called the ''Parental Responsibility Obligations Met through Immigration System Enforcement Act'' or ''PROMISE Act''.

*Section 1302. Aliens Ineligible to Receive Visas and Excluded from Admission for Non-Payment of Child Support*

Section 1302 amends INA §212(a) so that aliens who are in violation of court order to pay child support are inadmissible. This section defines child support order to include orders from a court in the United States as well as any foreign country, if a reciprocity agreement exists between that country and the United States or any individual State. The applicant for admission may become admissible by satisfying the outstanding child support debt, or by entering into an approved payment arrangement.

*Section 1303. Authority to Parole Aliens Excluded from Admission for Non-Payment of Child Support*

Section 1303 allows for the alien's physical return to the United States in the event that it is crucial to his ability to pay child support, the Secretary of DHS may parole the alien, but the alien will be subject to removal until he meets his support obligations.

*Section 1304. Effect of Non-Payment of Child Support on Establishment of Good Moral Character*

Section 1304 amends INA §101(f) so that an alien who is not in compliance with a court order to pay child support does not possess good moral character. This provision includes agreements in the United States and in any foreign country, if a reciprocity agreement exists between that country and the United States or any individual State. The alien would be unable to obtain certain immigration benefits, the most important of which is U.S. citizenship, without being able to demonstrate statutory good moral character.

*Section 1305. Authorization to Serve Legal Process in Child Support Cases on Certain Visa Applicants and Arriving Aliens*

Section 1305 authorizes immigration officers to serve on any alien seeking admission to the United States legal process with respect to any action to enforce or to establish a legal obligation of an individual to pay child support.

*Section 1306. Authorization to Obtain Information on Child Support Payments by Aliens*

Section 1306 grants the Secretaries of State and Homeland Security as well as the Attorney General access to child support payment information of an alien seeking an immigration benefit.

*Section 1307. Effective Date*

The provisions of this title shall be effective 90 days after enactment.

## TITLE XIV—FALLEN HEROES OF 9/11 ACT

*Section 1401. Short Title*

Section 1401 authorizes that this bill may be cited as the ''Fallen Heroes of 9/11 Act.''

*Section 1402. Congressional Findings*

*Section 1403. Fallen Heroes of 9/11 Congressional Medals*

Authorizes the President to present to the personal representative or next of kin of each individual who died on or after September 11, 2001, as a direct result of the act of terrorism within the United States on that date, a Fallen Heroes of 9/11 Congressional Medal in recognition of their sacrifice and to honor their deaths.

*Section 1404. Duplicate Medals*

Directs the Secretary of the Treasury to strike: (1) three medals to honor victims of the attack at the World Trade Center (WTC), victims aboard United Airlines Flight 93 that crashed in Pennsylvania, and victims at the Pentagon; and (2) duplicate medals for presentation to each precinct house, firehouse, emergency response station, or other duty station or place of employment to which officers, emergency workers, and other employees of the U.S. Government and of State and local government agencies (including the Port Authority of New York and New Jersey) and others who responded to and perished as a direct result of the WTC attacks were assigned on September 11, 2001.

*Section 1405. Establishment of Lists of Recipients*

Directs the Secretary of Treasury to establish a list of individuals eligible under section 1604 and add individuals as they subsequently become eligible.

*Section 1406. Sales to the Public to Defray Costs*

Directs the Secretary of Treasury to strike and sell duplicate medals to the public to defray the costs of production.

*Section 1407. National Medals*

The medals struck pursuant to this title are national medals for purposes of chapter 51 of title 31, United 11 States Code.

## TITLE XV—MISCELLANEOUS PROVISIONS

*Section 1501. Technical Amendments Relating to Public Law 107–56*

Section 1501 makes a series of technical amendments to Public Law No. 107–56, the USA PATRIOT Act.

*Section 1502. Miscellaneous Technical Amendments*

Section 1502 makes a series of technical amendments to Title 18 and Title 28, and it also repeals a duplicative authorization of a sexual abuse prevention program for runaway children which has recently been reauthorized in another statute. Sec. 117(b) of Pub. L. No. 108–96.

*Section 1503. Minor Substantive Amendment Relating to Contents of FBI Annual Report*

Section 1503 adds a requirement that the FBI include the number of personnel receiving danger pay in its annual report.

*Section 1504. Use of Federal Training Facilities*

Section 1504 is intended to ensure that the Justice Department uses the most cost-effective training and meeting facilities for its employees. For any predominantly internal training subsection (a) requires the Justice Department to use only a facility that does not require a payment to a private entity for the use of such facility, unless specifically authorized in writing by the Attorney General. Subsection (b) requires the Attorney General to prepare an annual report to the Chairmen and Ranking Members of the House and Senate Judiciary Committees that details each training requiring authorization under subsection (a). The report must include an explanation of why the facility was chosen and a breakdown of any expenditures incurred in excess of the cost of conducting the training at a facility that did not require such authorization.

*Section 1505. Technical Correction Relating to Definition Used in ''Terrorism Transcending National Boundaries'' Statute*

Makes technical changes to 18 USC 1958.

*Section 1506. Increased Penalties and Expanded Jurisdiction for Sexual Abuse Offenses in Correctional Facilities*

Section 1506 increases the penalties for sexual abuse within federal correction facilities and those who are held by the Bureau of Prisons.

*Section 1507. Expanded Jurisdiction for Contraband Offenses in Correctional Facilities*

Section 1507 expands the jurisdiction for contraband offenses in correctional facilities to include those in the custody of or in a facility under the control of the Attorney General and the Bureau of Prisons.

*Section 1508. Magistrate Judge's Authority To Continue Preliminary Hearing*

Amends 18 USC 3060(c) to include a provision to allow a magistrate judge to extend a preliminary hearing without the consent of the accused after a showing of extraordinary circumstances.

*Section 1509. Boys and Girls Clubs of America*

Section 1509 reauthorizes the Boys and Girls Club of America through 2010 and increases the minimum number of clubs that must exist nationwide.

*Section 1510. Authority of the Inspectors General*

Section 1510 amends the Crime Control Act of 1990 to allow Inspectors General to provide assistance to the National Center for Missing and Exploited Children.

*Section 1511. Foreign Student Visas*

This section would allow foreign students participating in ''distance learning'' programs at U.S. colleges and universities to enter the United States for up to 30 days on an ''F'' visa, in order to pursue their studies. Such aliens would be ineligible to change their nonimmigrant classification while in the United States.

*Section 1512. Pre-Release Custody of Prisoners*

This provision corrects an anomaly that developed in the law that prevents the BOP from exercising their previous ability to place convicts in community correctional facilities for a small part of the final portion of their sentences, so as to facilitate a smoother transition back into society.

*Section 1513. FBI Translator Reporting Requirement*

Section 1513 amends section 205 of the USA PATRIOT Act regarding an important reporting requirement by the Attorney General to the Senate and House Judiciary Committees about (1) the number of translators employed by the FBI, (2) legal and practical impediments to using translators employed by other Federal, State, or local agencies, on a full, part-time, or shared basis, and (3) the needs of the FBI for specific translation services in certain languages, and recommendations for meeting those needs. This section clarifies the deadline for the report, makes such reporting an annual requirement and expands the reporting requirement to include translators contracted by the government.

*Section 1514. Amendment to Victims of Child Abuse Act*

Section 1514 provides specific guidance on what information is required to be reported to the CyberTipline to include information on the content and images of the apparent violation, the Internet Protocol Address, the date and time associated with the violation, and specific contact information for the sender. In 1999, Congress established a statutory ''duty to report'' evidence of apparent violations of child pornography laws by Internet Service Providers (ISPs) to the CyberTipline which is operated by the National Center for Missing & Exploited Children (NCMEC).

*Section 1515. Development of an Information System Interstate Compact for Adult Offender Supervision*

This section supports the development of an information sharing system between states to support the exchange of information on offenders seeking and completing transfer from one state to another through the Interstate Compact for Adult Offender Supervision. This system will (1) establish a system of uniform data collection; (2) allow instant and real time access to information on active criminal cases by criminal justice officials; (3) provide regular reporting of Compact activities to heads of state councils, state executive, judicial and legislative leaders and criminal justice administrators; and (4) will be designed to integrate with current and future national, state, and local information systems.

TITLE XVI—REAUTHORIZATION OF THE NATIONAL FILM PRESERVATION BOARD

*Section 1601. Short Title*

Section 1601 sets forth the short title of Title XVII, the ''National Film Preservation Act of 2004.''

*Section 1602. Reauthorization and Amendment*

Section 1602 generally reauthorizes the National Film Preservation Board and directs the Librarian of Congress to continue the National Film Registry, established and maintained under the National Film Preservation Acts of 1988, 1992 and 1996, to maintain and preserve films that are culturally, historically, or aesthetically significant.

Section 1602(a) clarifies that the National Film Registry seal may be used with all formats of Registry films (e.g., film, video, DVD), inserts language regarding copyright ownership of Registry films that is consistent with a similar provision under the Sound Recording Preservation Act of 2000 [P.L. 106–474]; and sets forth, among current duties and powers of the Librarian under this title, new duties, parallel to those under the Sound Recording Preservation Act, to make registry films more broadly accessible for research and educational purposes, to review the comprehensive national plan developed under the National Film Preservation Act of 1992 and amend it to the extent necessary to ensure that it addresses technological advances in film preservation and storage, and to undertake initiatives to ensure preservation of the nation's moving image heritage, in concert with efforts of the National Audio-Visual Conservation Center (NAVCC) of the Library of Congress and other organizations.

Section 1602(b) amends the National Film Preservation Board to increase Board membership from 20 to 22 members, and amends the provision governing reimbursement of expenses so that it is consistent with the corresponding provision of the Sound Recording Preservation Act of 2000. The two new members are at-large members appointed by the Librarian.

Section 1602(c) incorporates parallel language from the Sound Recording Preservation Act of 2000, requiring the Librarian to utilize the NAVCC to ensure proper storage, preservation and dissemination of Registry films.

Section 1602(d) clarifies that the National Film Registry seal may be used with all formats of Registry films (e.g., film, video, DVD).

Section 1602(e) extends the authorization of the National Film Preservation Act for 10 years from the effective date of this Act, by striking the 7-year authorization period under the 1996 Act and substituting a 17-year period, dating from the 1996 Act effective date.

TITLE XVII—REAUTHORIZATION OF THE NATIONAL FILM PRESERVATION FOUNDATION

*Section 1701. Short Title*

Section 1701 sets forth the short title of Title XV111, the ''National Film Preservation Foundation Reauthorization Act of 2004.''

*Section 1702. Reauthorization and Amendment*

Section 1702(a) increases the Foundation's Board of Directors from nine to twelve, and allowing Board members to serve an unlimited number of terms.

Section 1702(b) and (c) permit the Board to incorporate the foundation in any location, rather than only in the District of Columbia.

Section 1702(d) increases the authorized appropriations level for federal matching funds for the Foundation from $250,000 per year to: $500,000 in fiscal years 2004 and 2005, and $1 million for fiscal years 2006 through 2013.

TITLE XVII—DREAM ACT

*Section 1801. Short Title*

This title may be called the ''Development, Relief, and Education for Alien Minors Act.''

*Section 1802. Definition of an Institute of Higher Education*

This section explains that ''institution of higher education'' is defined by the Higher Education Act of 1965.

*Section 1803. Restoration of State Option To Determine Residency for the Purposes of Higher Education Benefits*

Section 1803 repeals IIRIRA §505, 8 U.S.C. §1623. Each state is free to determine whom it deems a resident for the purpose of determining in-state tuition. The DREAM Act does not compel states to offer in-state tuition to undocumented aliens, nor does it prevent states from offering in-state tuition to anyone else.

*Section 1804. Cancellation of Removal and Adjustment of Status of Certain Long-Term Residents Who Entered the United States as Children*

Section 1804 provides that applicants may qualify for an initial conditional period of six years during which they can earn permanent resident status if they entered the United States at least five years prior to enactment, were under 16 years of age at the time of entry and are not inadmissible or deportable for specifically enumerated

grounds. There is a limited waiver only applicable for grounds of inadmissibility under Immigration and Nationality Act (INA) §212(a)(6) or deportability under INA §237(a)(1), (3), and (6). The applicant must also have graduated from high school, obtained a GED, or be admitted to an institution of higher learning as defined in 20 U.S.C. §1001. Additionally, the secondary and higher education institutions must be located within the United States. Persons previously ordered deported are not eligible for adjustment of status under this Act. Exceptions are made for those who remain within the United States with the U.S. government's consent or who received the deportation order while under the age of sixteen. This section also contains a physical presence requirement that the applicant must not have been out of the United States for more than ninety days in one visit, or one hundred and eighty days in the aggregate during the five-year period. There is a possible waiver of this requirement if the applicant shows exceptional circumstances no less compelling than serious illness to self, or death or serious illness to an immediate family member.

*Section 1805. Conditional Permanent Residence Status*

Section 1805 provides the ways through which conditional residents, after proving themselves worthy after six years, may become permanent residents. The ways are to earn a degree from an institution of higher education or to complete two years in a bachelor's or higher program, or to serve honorably in the military for at least two years. The applicant may obtain a waiver for these requirements but only at the discretion of the Secretary of Homeland Security or the Attorney General and only if applicant demonstrates ''exceptional and extreme unusual hardship.'' In addition, the applicant must maintain a clean record, meaning no crime or other misdeed that would render the applicant deportable or inadmissible. The alien cannot be a public charge during the six-year period. The applicant also must maintain continuous residence, as defined by this act, in the United States. If the applicant successfully completes the enumerated requirements, the six-year conditional period also satisfies the residency requirements for naturalization, subject to the limitations set forth in section 316 of the Immigration and Nationality Act.

*Section 1806. Retroactive Benefits Under this Act*

Section 1806 provides that if at the time of enactment an alien has already satisfied all requirements under sections 1804 and 1805 (meaning that the alien has already ''passed the test'' and has proven himself or herself worthy of the DREAM Act benefits) then that alien can adjust to permanent resident status without going to school or serving in the military again. Those who benefit from this ''grandfather'' clause must undergo the six-year conditional period and comply with all other requirements.

*Section 1807. Exclusive Jurisdiction*

Section 1807 provides that the Secretary of Homeland Security has jurisdiction to adjudicate affirmative applications for benefits, but the jurisdiction transfers to the EOIR under the DOJ when the applicant is in removal proceedings. The DREAM Act benefits will be available defensively to those in proceedings. Children 12 years of age or older who satisfy all other requirements of this act but who are still enrolled full time in school shall be granted a stay of proceedings by the EOIR. To the extent permissible under existing law, a child whose removal proceedings are stayed may obtain work authorization. Section 1807 does not preempt any existing federal or state labor laws, including laws governing minimum age to work.

*Section 1808. Penalties for False Statements in Application*

Section 1808 provides for criminal penalties for falsifying the application including fine or imprisonment or both.

*Section 1809. Confidentiality of Information*

Section 1809 contains a confidentiality clause. The Government is not permitted to use information gathered in processing an application under the DREAM Act to initiate removal proceedings against anyone. Violation of the confidentiality agreement would result in a fine up to $10,000. However, information sharing is permissible for the purpose of investigating a crime or a national security breach. Information also may be disseminated to a coroner for the purpose of identifying the deceased.

*Section 1810. Expedited Processing of Applications; Prohibition on Fees*

Section 1810 prohibits the collection of an application fee.

*Section 1811. SERVIS Registration*

Section 1811 requires an institution of higher education to register any student it enrolls who is a beneficiary under this Act in the Student and Exchange Visitor Information System (SEVIS).

*Section 1812. Higher Education Assistance*

Section 1812 limits the types of federal financial assistance that beneficiaries may receive. This section limits federal financial assistance under Title IV of the Higher Education Act of 1965 to student loans under Parts B and D, and work study programs under Part C of Title IV.

*Section 1813. GAO Report*

Section 1813 requires the Government Accounting Office (GAO) to produce a study, seven years after enactment, concerning the number of aliens who apply for and receive benefits under this Act.

TITLE XIX—DRU'S LAW

*Section 1901. Short Title*

This title may be called the Dru Sjodin National Sex Offender Public Database Act of 2004, or Dru's Law

*Section 1902. Definitions*

*Section 1903. Availability of the NSOR Database to the Public*

*Section 1904. Release of High Risk Inmates*

Mr. LEAHY. Mr. President, I am pleased to introduce with Senator HATCH the ''Department of Justice Appropriations Authorization Act, fiscal years 2005 through 2007.'' I thank Senator HATCH, the Chairman of the Judiciary Committee, for support of this legislation.

In the 107th Congress, the Senate and the House of Representatives properly authorized spending for the entire Department of Justice, ''DOJ'' or the ''Department'', for the first time since 1979. Congress extended that authorization in 1980 and 1981. Until 2002 Congress had not passed nor had the President signed an authorization bill for the Department. In fact, there were a number of years where Congress failed to consider any Department authorization bill. This 23-year failure to properly reauthorize the Department forced the appropriations committees in both houses to reauthorize and appropriate money.

We ceded the authorization power to the appropriators for too long, but in the 107th Congress Senator HATCH and I joined forces with House Judiciary Chairman SENSENBRENNER and Ranking Member CONYERS to create and pass bipartisan legislation that reaffirmed the authorizing authority and responsibility of the House and Senate Judiciary Committees—the ''21st Century Department of Justice Appropriations Authorization Act,'' Public Law 107–273. A new era of oversight began with that new charter for the Justice Department, with the Senate and House Judiciary Committees taking active new roles in setting the priorities and monitoring the operations of the Department of Justice, the FBI and other law enforcement agencies, and that bill helped our oversight duties in many ways. And, as we have learned in the past three years, the fight against terrorism makes constructive oversight more important than ever before.

Already this Congress, House Judiciary Committee Chairman SENSENBRENNER and Ranking Member CONYERS have authored and shepherded through the House of Representatives a new Department of Justice Appropriations Authorization Act for Fiscal Years 2004 through 2006, H.R. 3036. I commend both Chairman SENSENBRENNER and Ranking Member CONYERS for working in a bipartisan manner to pass that legislation in the House of Representatives.

The ''Department of Justice Appropriations Authorization Act, Fiscal Years 2005 through 2007,'' is a comprehensive authorization of the Department based on H.R. 3036 as passed by the House of Representatives on March 30, 2004. Our bipartisan legislation would authorize appropriations for the Department for fiscal years 2005 through 2007, provide permanent enabling authorities which will allow the Department to efficiently carry out its mission, clarify and harmonize existing statutory authority, and repeal obsolete statutory authorities. The bill also establishes certain reporting requirements and other mechanisms intended to better enable the Congress and the Department to oversee the operations of the Department. Finally, our bill incorporates numerous other pieces of legislation on such issues as preventing—and recovering missing children, cigarette trafficking, intellectual property, going after terrorists who commit violent acts against American citizens overseas, among others—currently pending before Congress that enjoy strong bipartisan support.

I will now highlight a number of the provisions that make up this authorization bill.

Title I of our bill authorizes appropriations for the Department of Justice for each of fiscal years 2005 through 2007. With minor exceptions, these authorizations generally reflect the President's budget request.

Title II makes numerous improvements and upgrades to the Department's grant programs that assist law

enforcement and criminal justice agencies; build community capacity to prevent, reduce and control crime; assist victims of crime; and prevent crime.

We decided to combine the current Byrne formula grant, Byrne discretionary grant and Local Law Enforcement Block Grant, (LLEBG), programs into one Edward Byrne Memorial Justice Assistance Grant Program with an authorization of $1.075 billion and a list of 35 uses—a combination of the traditional Byrne and LLEBG grants regulations—for which these grants may be used.

I am a longtime supporter of the Edward Byrne Memorial State and Local Law Enforcement Assistance Program and the LLEBG, both of which have been continuously targeted for elimination by the Bush Administration. LLEBG, which received $225 million this year, provide local governments with the means to underwrite projects that reduce crime and improve public safety, and allow communities to craft their own responses to local crime and drug problems. The Edward Byrne Memorial State and Local Law Enforcement Assistance Program, which Congress funded at $659,117,000 in fiscal year 2004, makes grants to States to improve the functioning of the criminal justice system, with emphasis on violent crimes and serious offenders, and to enforce State and local drug laws. As a senator from a rural State that relies on LLEBG and Byrne grants to combat crime, I have been concerned with the President's proposals for funding and program eliminations of these well-established grant programs; our legislation makes it clear that the same authorized funding levels and uses will be available under the new consolidated grant program as under the previous two grant programs.

I am pleased that Title II also extends the authorization of appropriations for the Regional Information Sharing System, RISS, at $100 million for each of fiscal years 2005 through 2007. RISS serves as an invaluable tool to Federal, State and local law enforcement agencies by providing much-needed criminal intelligence and investigative support services. It has built a reputation as one of the most effective and efficient means developed to combat multi-jurisdictional criminal activity, such as narcotics trafficking and gang activity. Without RISS, most law enforcement officers would not have access to newly developed crime-fighting technologies and would be hindered in their intelligence-gathering efforts.

By providing State and local law enforcement agencies with rapid access to its secure, state-of-the-art, nationwide information sharing system, RISS gives law enforcement officers the resources they need to identify and apprehend potential terrorists before they strike. With this in mind, I authored Title VII of the USA PATRIOT Act, Public Law 107–56, to increase information sharing for critical infrastructure protection. The law expanded RISS to facilitate information sharing among Federal, State and local law enforcement agencies to investigate and prosecute terrorist conspiracies and activities, and increased authorized funding to $100 million.

Proper funding provides RISS with the means to maintain six regionally-based information sharing centers that allow for information and intelligence services to be disseminated nationwide addressing major, multi-jurisdictional crimes. In addition, as the September 11 terrorist attacks and calls for increased vigilance against future attacks demonstrated, RISS requires additional support to intensify anti-terrorism measures.

Each RISS center has up to 1,600 member agencies, the vast majority of which are at the municipal and county levels. Over 400 State agencies and over 850 Federal agencies, however, are also members. The Drug Enforcement Administration, Federal Bureau of Investigation, U.S. Attorneys' Offices, Internal Revenue Service, Secret Service, Customs, and the Bureau of Alcohol, Tobacco, Firearms and Explosives are among the Federal agencies that participate in the RISS Program.

Unfortunately, the Consolidated Appropriations law for FY 2004 did not provide full funding for RISS, instead including $30 million for the program. For the coming fiscal year, the President has proposed $45 million. We must ensure that RISS can continue current services, meet increased membership support needs for terrorism investigations and prosecutions, increase intelligence analysis capabilities and add staff to support the increasing numbers of RISS members.

This title also contains a reauthorization of the Crime Free Rural States program that we created in the DOJ Authorization bill in the last Congress. This program authorizes $10 million annually for rural states to address specific crime problems plaguing their areas. In Vermont, for example, this funding could be used to battle heroin abuse and its consequences.

This authorization bill contains a number of provisions of great interest to victim service organizations and those who administer federal grants for victim assistance and compensation. In particular, I am pleased that we have responded to repeated requests from the field to increase the amount that State assistance and compensation programs may retain for administrative purposes. I have been proposing such an increase for many years, without success.

Under current law, not more than five percent of victim assistance and compensation grants may be used for the administration of the State program receiving the grant. The House bill effectively decreases this already-low apportionment by combining administrative costs with training costs—currently one percent under guidelines promulgated by the Office for Victims of Crime, OVC. By contrast, we propose raising the amount that can be used for both worthwhile purposes to 7.5 percent of the grants. While this is still less than 10 percent retention permitted, for example, by the Violence Against Women Act, it will help States to accommodate the addition of training purposes in their costs.

Our bill will also amend the Victims of Crime Act, VOCA, to clarify the provisions establishing the Antiterrorism Emergency Reserve in various ways. The original H.R. 3036 permits replenishments of the Emergency Reserve based upon amounts obligated rather than amounts actually expended in any given fiscal year. Our bill includes two additional clarifications that I proposed. First, it makes explicit that the Emergency Reserve may be replenished only once each fiscal year, and may not be continually replenished as amounts are obligated or expended. Allowing continual replenishments could result in the obligations or expenditures exceeding the $50 million Emergency Reserve maximum. Second, we have ensured that all Emergency Reserve funds—whether carried over, used to replenish the Reserve, obligated or expended—fall above the cap on spending from the Crime Victim Fund as set by appropriations legislation.

Section 242 of the House-passed bill authorized the Assistant Attorney General for the Office for Justice Programs (OJP) to impose special conditions and determine priorities for formula grants. It was unclear to me why the authority to determine formula grant priorities was necessary and what its real impact would be on local victim services. Could it be read to authorize OJP to infringe on the discretion of each State to meet its own needs, as for example by mandating that State VOCA programs give priority to public agencies over nonprofit community organizations, or fund faith-based programs before secular programs? Priorities are already set out by Congress in the authorizing statutes, as is the requirement that programs coordinate public and private victim services in their communities, and the Justice Department should not be allowed to override those congressional directives. Moreover, VOCA already has extensive reporting requirements that enable the Department to monitor how States are distributing these funds. We have therefore deleted the authority to determine formula grant priorities, while retaining the special conditions provision.

Subtitle D of Title II deals with approaches to prevent crime. I am especially pleased that we included provisions that will specifically aid in preventing rural crime because rural States and communities face a number of unique law enforcement challenges. We added these provisions from Senator DASCHLE's ''Rural Safety Act,'' S. 1907, of which I am proud to be an original cosponsor. I commend our

Democratic Leader for his commitment to providing real and meaningful investments to address the unique set of challenges facing rural law enforcement agencies.

Rural law enforcement officers patrol larger areas, operate under tighter budgets and with smaller staffs than their urban and suburban counterparts. This legislation creates programs specifically designed to meet the many complex needs of rural law enforcement agencies and officers. Methamphetamine production and use, for example, is a growing concern for Vermonters. Because the ingredients and the equipment used to produce methamphetamines are so inexpensive and readily available, the drug can be manufactured or ''cooked'' in homemade labs. This has become one of the major problems facing law enforcement agencies nationwide. Last month, the Vermont State Police busted the first known methamphetamine lab in the State. We must help our law enforcement agencies as they struggle to keep up with its troubling growth.

To help law enforcement combat the spread of methamphetamine and other challenges, we authorize in this bill $20 million in grants for fiscal year 2005 to provide for the cleanup of methamphetamine laboratories and related hazardous waste in units of local government and tribal governments located outside a Standard Metropolitan Statistical Area; and the improvement of contract-related response time for cleanup of methamphetamine laboratories and related hazardous waste in units of local establish methamphetamine prevention and treatment pilot programs in rural areas, and provide additional financial support to local law enforcement.

We also establish a rural 9–1–1 service program to provide access to, and improve a communications infrastructure that will ensure a reliable and seamless communication between, law enforcement, fire, and emergency medical service providers in units of local government and tribal governments located outside a Standard Metropolitan Statistical Area and in States. Grants authorized at $25 million for fiscal year 2005 under this program will be used to establish or improve 9–1–1 service in rural communities. Priority in making grants under this program will be given to communities that do not have 9–1–1 service.

I am pleased that our bill includes the Campbell-Leahy-Hatch Bulletproof Vest Partnership Grant Act of 2003, a bill to reauthorize an existing matching grant program to help State, tribal, and local jurisdictions purchase armor vests for use by law enforcement officers. This bill was passed by the Senate by unanimous consent a year ago this month and it awaits consideration by the House of Representatives.

This measure marks the third time that I have had the privilege of teaming with my friend and colleague Senator CAMPBELL to work on this legislation. We authored the Bulletproof Vest Grant Partnership Act of 1998 in response to the tragic Carl Drega shootout in 1997 on the Vermont-New Hampshire border, in which two State troopers who did not have bulletproof vests were killed. The Federal officers who responded to the scenes of the shooting spree were equipped with lifesaving body armor, but the State and local law enforcement officers lacked protective vests because of the cost.

Two years later, we successfully passed the Bulletproof Vest Partnership Grant Act of 2000, and I hope we will go 3-for-3 this time around. Senator CAMPBELL brings to our effort invaluable experience in this area and during his time in the Senate he has been a leader in the area of law enforcement. As a former deputy sheriff, he knows the dangers law enforcement officers face when out on patrol. I am pleased that we have been joined in this effort by 12 other Senate cosponsors.

Our bipartisan legislation will save the lives of law enforcement officers across the country by providing more help to State and local law enforcement agencies to purchase body armor. Since its inception in 1999, this highly successful Department of Justice program has provided law enforcement officers in 16,000 jurisdictions nationwide with nearly 350,000 new bulletproof vests. In Vermont, 148 municipalities have been fortunate to receive funding for the purchase of almost 1200 vests. Without the Federal funding given by this program, I daresay that there would be close to that number of police officers without vests in Vermont today.

The Bulletproof Vest Partnership Grant Act of 2003 will further the success of the Bulletproof Vest Partnership Grant Program by re-authorizing the program through fiscal year 2007. Our legislation would continue the Federal-State partnership by authorizing up to $50 million per year for matching grants to State and local law enforcement agencies and Indian tribes at the Department of Justice to buy body armor.

We know that body armor saves lives, but the cost has put these vests out of the reach of many of the officers who need them. This program makes it more affordable for police departments of all sizes. Few things mean more to me than when I meet Vermont police officers and they tell me that the protective vests they wear were made possible because of this program. This is the least we should do for the officers on the front lines who put themselves in danger for us every day. I want to make sure that every police officer who needs a bulletproof vest gets one.

We also included in this authorization bill the ''Prevent All Cigarette Trafficking, PACT, Act,'' as passed by the Senate by unanimous consent on December 9, 2003, but which has yet to be taken up and passed by the House. I commend Senators HATCH and KOHL for their leadership on this measure and thank them for working with me, among others, to craft the compromise language that we include in this bill to crack down on the growing problem of cigarette smuggling, both interstate and international, as well as to address the connection between cigarette smuggling activities and terrorist funding. I am proud to join Senator HATCH, Senator KOHL and 10 others as a cosponsor of the standalone bill.

I also thank the National Association of Attorneys General and the Campaign for Tobacco-Free Kids, for working with us and contributing to this language. I want to say a special thanks to Vermont Attorney General Bill Sorrell, who also serves as the current Chair of the NAAG Tobacco Committee, for his valuable input on the problems with cigarette smuggling that states are facing and his support for this compromise measure. I also want to thank the Vermont Grocers Association, the Vermont Retail Association, the Vermont Association of Chiefs of Police, and the National Conference of State Legislatures for their support for this measure.

The movement of cigarettes from low-tax areas to high-tax areas in order to avoid the payment of taxes when the cigarettes are resold has become a public health problem in recent years. As State after State chooses to raise its tobacco excise taxes as a means of reducing tobacco use and as a source of revenue, many smokers have sought cheaper means by which to purchase cigarettes. Smokers can often purchase cigarettes and tobacco from remote sellers, Internet or mail order at substantial discounts due to avoidance of State taxes. These sellers, however, are evading their tax obligations because they neither collect nor pay the proper State and local excise taxes for cigarette and other tobacco product sales.

We have the ability to dramatically reduce smuggling without imposing undue burdens on manufacturers or law abiding citizens. By reducing smuggling we will also increase government revenues by minimizing tax avoidance. My friend General Sorrell has told me that this has become a rapidly growing problem in Vermont as more and more tobacco product manufacturers fail to collect and pay cigarette taxes. Criminals are getting away with smuggling and not paying tobacco taxes because of weak punishments, products that are often poorly labeled, the lack of tax stamps and the inability of the current distribution system to track sales from State-to-State. These lapses point to a need for uniform rules governing group sales to individuals.

The PACT Act will give States the authority to collect millions of dollars in lost State tax revenue resulting from online and other remote sales of cigarette and smokeless tobacco. It also ensures that every tobacco retailer, whether a brick-and-mortar or remote retailer of tobacco products, play by the same rules by equalizing the tax burdens.

Moreover, the PACT Act gives States the authority necessary to enforce the Jenkins Act, a law passed in 1949, which requires cigarette vendors to report interstate sales of cigarettes. This legislation enhances States' abilities to collect all excise taxes and verify the deposit of all required escrow payments for cigarette and smokeless tobacco sales in interstate commerce, including internet sales. In addition, it provides Federal and State law enforcement with additional resources to enforce state tobacco excise tax laws.

Finally, at the request of the National Association of Attorneys General and many State Attorneys General, we have added a new section to provide the States with authority to enforce the Imported Cigarette Compliance Act to crack down on international tobacco smuggling. This additional authority should further reduce tax evasion and eliminate a lucrative funding source for terrorist organizations.

We must not turn a blind eye to the problem of illegal tobacco smuggling. Those who smuggle cigarettes are criminals and we must close the loopholes that allow cigarette smuggling to continue.

The United States has from its inception recognized the importance of intellectual property laws in fostering innovation, and vested in Congress the responsibility of crafting laws that ensure that those who produce inventions are able to reap economic rewards for their efforts. I am pleased that we can today include, as part of the Department of Justice Authorization Act, the ''Cooperative Research and Technology Enhancement Act of 2004,'' the CREATE Act, legislation that I cosponsored along with Senator HATCH, Senator KOHL, Senator FEINGOLD, Senator SCHUMER, Senator GRASSLEY, Senator JOHNSON, and Senator COCHRAN. This bill will provide a needed remedy to one aspect of our Nation's patent laws. On June 25, 2004, the CREATE Act passed the Senate by unanimous consent.

When Congress passed the Bayh-Dole Act in 1980, the law encouraged private entities and not-for-profits such as universities to form collaborative partnerships in order to spur innovation. Prior to the enactment of this law, universities were issued fewer than 250 patents each year. That this number has in recent years surpassed two thousand is owed in large measure to the Bayh-Dole Act. The innovation this law encouraged has contributed billions of dollars annually to the United States economy and has produced hundreds of thousands of jobs.

However, one component of the Bayh-Dole Act, when read literally, runs contrary to the intent of that legislation. In 1999, the United States Court of Appeal for the Federal Circuit ruled, in Oddzon Products, Inc. v. Just Toys, Inc., that non-public information may in certain cases be considered ''prior art''—a standard which generally prevents an inventor from obtaining a patent. Thus some collaborative teams that the Bayh-Dole Act was intended to encourage have been unable to obtain patents for their efforts. The result is a disincentive to form this type of partnership, which could have a negative impact on the U.S. economy and hamper the development of new creations.

However, the Federal Circuit in its ruling invited Congress to better conform the language of the Bayh-Dole Act to the intent of the legislation. The ''CREATE Act'' does exactly that by ensuring that non-public information is not considered ''prior art'' when the information is used in a collaborative partnership under the Bayh-Dole Act. The bill also includes strict evidentiary burdens to ensure that the legislation is tailored narrowly in order to solely fulfill the intent of the Bayh-Dole Act.

I am pleased that the PIRATE Act, which I cosponsored with Senator HATCH, will be included as part of this bipartisan bill. Like the overall bill, the PIRATE Act is a consensus bill that will give the Justice Department new and needed tools—in this case, these tools are specific to the fight against piracy. This bill was unanimously passed by the Senate on June 25, 2004. By including this measure in the Department of Justice Authorization Bill, we hope to muster more forces to combat the growing problem of digital piracy.

For too long, Federal prosecutors have been hindered in their pursuit of pirates, by the fact that they were limited to bringing criminal charges with high burdens of proof. In the world of copyright, a criminal charge is unusually difficult to prove because the defendant must have known that his conduct was illegal and he must have willfully engaged in the conduct anyway. For this reason prosecutors can rarely justify bringing criminal charges, and copyright owners have been left alone to fend for themselves, defending their rights only where they can afford to do so. In a world in which a computer and an Internet connection are all the tools you need to engage in massive piracy, this is an intolerable predicament.

The PIRATE Act will give the Attorney General civil enforcement authority for copyright infringement. It also calls on the Justice Department to initiate training and pilot programs to ensure that Federal prosecutors across the country are aware of the many difficult technical and strategic problems posed by enforcing copyright law in the digital age.

This new authority does not supplant either the criminal provisions of the Copyright Act, or the remedies available to the copyright owner in a private suit. Rather, it allows the government to bring its resources to bear on this immense problem, and to ensure that more creative works are made available online, that those works are more affordable, and that the people who work to bring them to us are paid for their efforts.

I am pleased that the Koby Mandell Act of 2003 was included in this legislation. I am a proud cosponsor of the stand-alone bill. The Act would establish an office within the Department of Justice with a mandate to ensure equal treatment of all victims of terrorist acts committed overseas. Its primary role would be to guarantee that vigorous efforts are made to pursue, prosecute, and punish each and every terrorist who harms Americans overseas, no matter where attacks occur. It would also take steps to inform victims of important developments in international cases, such as status reports on efforts to capture terrorists and monitoring the incarceration of those terrorists who are imprisoned overseas. This is important legislation that would send a strong message of resolve that we are committed to finding and punishing every terrorist who harms Americans overseas.

I am pleased that we have included part of S. 1286, the Seniors Safety Act, which I introduced last year. This bill would create an enhanced sentencing penalty for those who commit crimes against the elderly, create new civil and criminal penalties for pension fraud, and create a centralized service to log complaints of telemarketing fraud.

We would also provide the Attorney General with a new and substantial tool to prevent telemarketing fraud—the power to block or terminate service to telephone facilities that are being used to defraud innocent people. The Justice Department could use this authority to disrupt telemarketing fraud schemes directed from foreign sources by cutting off the swindlers' telephone service. Even if the criminals acquire a new telephone number, temporary interruptions will prevent some seniors from being victimized.

We have agreed to incorporate a slightly revised version of the Federal Prosecutors' Retirement Benefit Equity Act of 2004, which was originally introduced as a stand-alone bill with my good friends Senator HATCH, Senator MIKULSKI and Senator DURBIN. This bill would correct an inequity that exists under current law, whereby Federal prosecutors receive substantially less favorable retirement benefits than nearly all other people involved in the Federal criminal justice system including pretrial services officers, probation officers, accountants, cooks and secretaries of the Bureau of Prisons. Indeed the benefits incorporated in this bill are comparable not only to those received by traditional ''law enforcement officers'' such as Federal agents, but also the Capitol Police, Supreme Court police, air traffic controllers and firefighters. The bill would essentially allow, but not mandate, AUSAs to retire at age 50 with 20 years of service.

Currently, Assistant United States Attorneys, AUSAs, and other Federal

prosecutors are not eligible for these enhanced benefits even though they are enjoyed by the vast majority of other employees in the criminal justice system. Once a defendant is brought to into the criminal justice system, the person with whom they have the most face-to-face contact, and often in an extremely confrontational environment, is the Federal prosecutor. AUSAs and other Federal prosecutors participate in planning investigations, interviewing witnesses both inside and outside of the office setting, debriefing defendants, obtaining warrants, negotiating plea agreements and representing the government at trials and sentencings. Each of these responsibilities encompass ''the investigation, apprehension, or detention'' of individuals suspected or convicted of violating Federal law which is just one justification for granting extended benefits to law enforcement officers.

AUSAs are an integral part of the criminal justice system and their unique position and demanding jobs has rightfully earned them the benefits set forth in this important bill.

I am pleased that S. 710, the Leahy-Hatch Anti-Atrocity Alien Deportation Act, was included in this legislation. This measure would expand the grounds for removing alien human rights violators from the United States, or for denying them entry in the first place. We have heard many accounts of abusers who have taken advantage of America's freedoms after committing horrifying violations of their fellow citizens in their native lands. We need to stop that from happening again.

This bill passed the Judiciary Committee last November but has been subject to an anonymous hold on the floor. A similar version of it passed the Senate by unanimous consent in the 106th Congress. It is long past time to make it law.

I would note that on May 12, a Rwandan man wanted on international charges of genocide and crimes against humanity was arrested at his suburban Chicago home by agents from the Bureau of Immigration and Customs Enforcement, ICE. Before I and others began to raise the issue of the war criminals among us, it was my impression that the former INS paid little attention to rooting out these thugs. I am pleased that the issue has taken on greater importance at ICE, and urge the Senate to pass this bill so that we can expand the grounds of inadmissibility and removability for human rights violators.

I am proud that we include Schumer-Specter legislation to honor the sacrifice of the September 11, 2001, terrorist victims by creating Congressional medals that would be awarded to their families and loved ones by the President. I am proud to have joined my friends as a cosponsor of this legislation, as have 18 other Senators.

The tragedy of September 11, 2001, demanded unprecedented sacrifices of everyday American civilians and rescue workers—3,000 of whom lost their lives in the attacks. In recognition of their heroic actions on that day, the bipartisan Fallen Heroes of 9/11 Act would create a medal to be awarded posthumously to the victims of the September 11 terrorist attacks. The medal would be designed by the Department of Treasury and awarded to representatives of the deceased by the President. The production of the medals would be paid for by the sale of duplicate medals to the public. Those of us who lost loved ones almost three years ago can never have them back, but a medal of honor could recognizes the sacrifices and heroic efforts of our fallen citizens.

We also incorporated language similar to the Leahy-Grassley-Lincoln ''Missing Child Cold Case Review Act of 2004,'' S. 2435, which will allow an Inspector General to authorize his or her staff to provide assistance on and conduct reviews of the inactive case files, or ''cold cases,'' involving children stored at the National Center for Missing and Exploited Children, NCMEC, and to develop recommendations for further investigations. The only alteration we made to the original bill was to include language to also allow the Inspector General of the Government Printing Office to authorize his or her staff to work on cold cases.

Speed is everything in homicide investigations. As a former prosecutor in Vermont, I know firsthand that speed is of the essence when trying to solve a homicide. This focus on speed, however, has led the law enforcement community to generally believe that any case not solved within the first 72 hours or lacking significant leads and witness participation has little likelihood of being solved, regardless of the expertise and resources deployed. With time, such unsolved cases become ''cold,'' and these are among the most difficult and frustrating cases detectives face because they are, in effect, cases that other investigators, for whatever reason, failed to solve.

Our Nation's law enforcement agencies, regardless of size, are not immune to rising crime rates, staff shortages and budget restrictions. Such obstacles have strained the investigative and administrative resources of all agencies. More crime often means that fewer cases are vigorously pursued, fewer opportunities arise for follow-up and individual caseloads increase for already overworked detectives.

All the obstacles that hamper homicide investigations in their early phases contribute to cold cases. The National Center for Missing and Exploited Children—our Nation's top resource center for child protection—presently retains a backlog of cold cases involving children that law enforcement departments nationwide have stopped investigating primarily due to all these obstacles. NCMEC serves as a clearinghouse for all cold cases in which a child has not been found and/or the suspect has not been identified.

This provision will allow an Inspector General to provide staff support to NCMEC for the purpose of conducting reviews of inactive case files to develop recommendations for further investigation and similar activities. The Inspector General community has one of the most diverse and talented criminal investigative cadres in the Federal Government. A vast majority of these special agents have come from traditional law enforcement agencies, and are highly trained and extremely capable of dealing with complex criminal cases.

Under current law, an Inspector General's duties are limited to activities related to the programs and operations of an agency. This measure would allow an Inspector General to permit criminal investigators under his or her supervision to review cold case files, so long as doing so would not interfere with normal duties. An Inspector General would not conduct actual investigations, and any Inspector General would only commit staff when the office's mission-related workloads permitted. At no time would these activities be allowed to conflict with or delay the stated missions of an Inspector General.

From time to time a criminal investigator employed by an Inspector General may be between investigations or otherwise available for brief periods of time. This act would also allow those resources to be provided to the National Center for Missing and Exploited Children. Commitment of resources would be at a minimum and would not materially affect the budget of any office.

We have before us the type of bipartisan legislation that should be moved easily through the Senate and House. It is supported by the Department of Justice Office of the Inspector General. I applaud the ongoing work of the National Center for Missing and Exploited Children and hope that we can soon provide NCMEC with the resources it requires to solve cold cases involving missing children.

This authorization bill includes a provision that would help colleges and universities in Vermont and across the Nation. It would allow foreigners who are pursuing ''distance learning'' opportunities at American schools to enter the country for up to 30 days to fulfill academic requirements. Under current law, these students do not fall under any visa category, and many are being denied entry and are thus unable to complete their educations. This is a loophole that harms both those students and the institutions that serve them.

In recent months, serious questions have been raised in the media and in several congressional hearings about deficiencies within the translation program at the FBI. Nearly 2 years ago I began asking questions in Judiciary Committee hearings about the FBI's translation program. Most of these remain unanswered. As a result, members of our Committee are no closer to

determining the scope of the issue, including the pervasiveness and seriousness of FBI shortcomings in this area, or what the FBI intends to do to rectify personnel shortages, security issues, translation inaccuracies and other problems that have plagued the translator program for years.

Section 205 of the USA PATRIOT Act included an important reporting requirement by the Attorney General to the Senate and House Judiciary Committees about 1. the number of translators employed by the FBI, 2. legal and practical impediments to using translators employed by other Federal, State, or local agencies, on a full, part-time, or shared basis, and 3. the needs of the FBI for specific translation services in certain languages, and recommendations for meeting those needs. To date, the Attorney General has not made the report required by Section 205—most likely because there is no date certain written in the law by which the report must be made. This provision fills that gap by requiring the report ''not later than 30 days after the date of enactment . . . and annually thereafter . . . with respect to the preceding 12 month period.'' It also expands the reporting requirement to include translators ''contracted'' by the government in addition to those ''employed.''

I have worked my entire professional life to protect children from those who would prey on them. Preventing child exploitation through the use of the Internet is one concrete and important way to help this important cause. In this regard, under the Protection of Children from Sexual Predators Act of 1998, Public Law 105–314, remote computing and electronic communication service providers are mandated to report all instances of child pornography to the National Center for Missing and Exploited Children. I respect and applaud the work of NCMEC and its tireless efforts in this important national priority.

In March 1998, Congress mandated that NCMEC initiate the CyberTipline for citizens to report online sexual crimes against children. In December 1999, Congress passed Public Law 106–113 to modify 42 U.S.C. §13032(b)(1) to set forth a ''duty to report'' by ISPs. According to NCMEC, many U.S. electronic communications service providers are not complying with the requirement that they register and use the CyberTipline to report child porn found on their services because supporting regulations required to be promulgated by the Department of Justice on matters such as the contents of the report were never done so.

In this authorization bill we propose language that amends the ''duty to report'' language by providing specific guidance on what information is required to be included in the ISP reports. The information required includes the content and images of the apparent violation, the Internet Protocol Address, the date and time associated with the violation, and specific contact information for the sender.

America's film heritage is an important part of the American experience, an inheritance from previous generations that help tell us who we are—and who we were—as a society. They offer insight into our history, our dreams, and our aspirations. Yet sadly, this part of American heritage is literally disintegrating faster than can be saved. Today, I am delighted that with the help of Senator HATCH, the ''National Film Preservation Act'' can be included in our Department of Justice Reauthorization bill.

I introduced the ''National Film Preservation Act'' last November, a bill that will reauthorize and extend the ''National Film Preservation Act of 1996.'' We first acted in 1988 in order to recognize the educational, cultural, and historical importance of our film heritage, and its inherently fragile nature. In doing so, Congress created the National Film Preservation Board and the National Film Preservation Foundation both of which operate under the auspices of the Library of Congress in order to help save America's film heritage.

The ''National Film Preservation Act'' will allow the Library of Congress to continue its important work in preserving America's fading treasures, as well as providing grants that will help libraries, museums, and archives preserve films and make those works available for study and research. These continued efforts are more critical today than ever before. While a wide range of works have been saved, with every passing day we lose the opportunity to save more. Fewer than 20 percent of the features of the 1920s exist in complete form and less than 10 percent of the features of the 1910s have survived into the new millennium.

The films saved by the National Film Preservation Board are precisely those types of works that would be unlikely to survive without public support. At-risk documentaries, silent-era films, avant-garde works, ethnic films, newsreels, and home movies frequently provide more insight into the American experience than the Hollywood sound features kept and preserved by major studios. What is more, in many cases only one copy of these ''orphaned'' works exists. As the Librarian of Congress, Dr. James H. Billington, has noted, ''Our film heritage is America's living past.''

I would like to thank Senator HATCH again for working with me to include the ''National Film Preservation Act'' in the bill we are introducing today.

I am pleased that the DREAM Act has been included in this bill. I am a cosponsor of the bill, which Senators HATCH and DURBIN introduced last year and was passed last fall by the Judiciary Committee. It would benefit undocumented alien children who were brought to the United States by their parents as young children, by restoring States' ability to offer them in-state tuition and offering them a path to legal residency. It has been distressing that a bill with Committee approval and 48 sponsors has been unable to get a vote on the floor of the Senate, and I hope that including the DREAM Act in this legislation will give it added momentum.

Status Reports on Enemy Combatants: The House-passed bill included an important reporting requirement authored by Representative ADAM SCHIFF and adopted by the House Judiciary Committee. Specifically, this provision required the Department of Justice to submit an annual report to Congress specifying the number of U.S. persons or residents detained on suspicion of terrorism, and describing Department standards for recommending or determining that a person should be tried as a criminal defendant or designated as an enemy combatant. A Washington Post editorial dated April 3, 2004, praised this provision, while noting that ''If more members of the House took their duty to legislate in this critical area seriously, Congress would craft a bill that actually imposed standards rather than simply inquired what they were.'' I agree, and regret that was unable to persuade Chairman HATCH to retain this modest oversight tool.

Privacy Officer: I am disappointed that we will not be including the privacy officer provision referred to us by the House. It is critical that the Department have a designated leader who is consistently mindful of the impact of the Department's activities on privacy rights. While there has been some history of a privacy official at the Department, these positions have been nonstatutory, and thus there has been no guarantee of consistent vigor and accountability on these issues. Given that the Department's mission increasingly involves gathering and assessing personal information, we simply can't afford to have a lapse in accountability on privacy. Moreover, this is not an untested idea. Congress created a privacy officer for the Department of Homeland Security, and it has been recognized as a successful example of how this role can be helpful in assessing and addressing privacy concerns. We need to follow this lead, and the privacy officer provision would have been a good opportunity to do so.

I look forward to working with Senator HATCH, Congressman SENSENBRENNER and Congressman CONYERS to continue the important business of reauthorizing the Department of Justice. Clearly, regular reauthorization of the Department should be part and parcel of the Committees' traditional role in overseeing the Department's activities. Swift passage into law of the ''Department of Justice Appropriations Authorization Act, Fiscal Years 2005 through 2007'' will be a significant step toward enhancing our oversight role.

By Mr. GRASSLEY (for himself, Mr. LEAHY, Mr. BOND, Mr. NELSON of Nebraska, and Mr. FEINGOLD):

S. 2864. A bill to extend for eighteen months the period for which chapter 12 of title 11, United States Code, is reenacted; to the Committee on the Judiciary.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2864

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Family Farmer Bankruptcy Relief Act of 2004''.

**SEC. 2. EIGHTEEN-MONTH EXTENSION OF PERIOD FOR WHICH CHAPTER 12 OF TITLE 11, UNITED STATES CODE, IS REENACTED.**

(a) AMENDMENTS.—Section 149 of title I of division C of Public Law 105–277 (11 U.S.C. 1201 note) is amended—

(1) by striking ''January 1, 2004'' each place that term appears and inserting ''July 1, 2005''; and

(2) in subsection (a)—

(A) by striking ''June 30, 2003'' and inserting ''December 31, 2003''; and

(B) by striking ''July 1, 2003'' and inserting ''January 1, 2004''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) are deemed to have taken effect on January 1, 2004.

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By Mr. INHOFE (for himself, Mr. HAGEL, Mr. ROBERTS, Mr. BURNS, Mr. CORNYN, Ms. CANTWELL, Mrs. BOXER, Mr. NELSON of Nebraska and Mr. CRAIG):

S. 2866. A bill to amend the Farm Security and Rural Investment Act of 2002 to clarify the authority of the Secretary of Agriculture and the Commodity Credit Corporation to enter into memorandums of understanding with a State regarding the collection of approved State commodity assessments on behalf of the State from the proceeds of marketing assistance loans; read the first time.

Mr. INHOFE. Mr. President, I rise today to proudly introduce the Commodity Assessment Protection and Reform Act.

This legislation fixes a potential problem for our wheat producers in the State of Oklahoma as well as other wheat producing states.

As Government encourages agricultural producers to become more responsible for their own marketing and research programs, it is vital that we give producers the ability to do just that.

To enhance marketing and research of agricultural commodities, farm programs for many years have authorized the use of marketing loans for some commodities. Producers receive cash loans using the commodity as collateral. Marketing loans allow the producer to market crops while also providing cash to pay outstanding bills.

These marketing and research programs provide many benefits: increasing commodity category sales; creating a viable, thriving marketplace for individual businesses; providing greater opportunity for brands and businesses to compete for their share of the category; protecting small producers from being severely disadvantaged against large competitors that could undermine industry growth; building a more favorable economic environment—better prices for producers, more revenue growth for processors; reducing dependence on taxpayer dollars for support payments and government administration in times of economic hardship; providing an open, free flow of consumer information to help consumers make informed choices about purchasing these commodities; and providing ongoing investments in research to ensure product quality, safety and nutrition expectations.

For wheat, this program is administered by the individual State wheat commissions and is not a national program. In Oklahoma, wheat producers have the option to opt out of the program if they choose.

Wheat producers in Oklahoma, and in many other States, have supported this system for collecting assessments on the commodities they produce. For wheat placed under loan with the United States Department of Agriculture, USDA, Commodity Credit Corporation, CCC, the CCC has collected these grower-funded assessments. Again, these assessments are used to fund research and marketing programs.

The loan placement is considered to occur at the first point of sale. The CCC has supported State commissions in the collection of grower-funded assessments for many years. These State assessments have been collected under a cooperative agreement defined in a Memoranda of Understanding between individual State commodity commissions and the USDA.

Recently USDA determined that if the state commission changes the assessment rate, USDA would no longer honor a Memorandum of Understanding between a state commodity commission and USDA. In several states, wheat growers voted to increase their support of commodity activities by approving an assessment increase. State wheat commissions whose growers have voted for increased funding are faced with no viable means of collecting assessments on the commodity under the loan program.

USDA claims that it lacks statutory authority to recognize these new or modified Memoranda of Understanding. The decision by USDA not to honor amended Memoranda of Understanding could cause serious financial harm to the work of the commissions, which support a range of activities from research to market development.

The use of these funds is very important for the expanding markets and increasing research. They become even more critical when wheat prices are low.

This decision by USDA to no longer honor these Memoranda of Understanding has caused great hardship for a number of wheat states whose producers have voluntarily voted to give more of their own money to programs they deem important.

In order to correct this problem, I am introducing legislation that will allow USDA to continue to collect approved State commodity assessments. This legislation authorizes the USDA to recognize a Memorandum of Understanding when a State has increased or modified its assessment rate, as well as recognize Memoranda of Understanding that have been terminated prior to the date of enactment of this legislation.

According to USDA, the cost of implementing this legislation would be minimal, since the collection procedure is already in place and will only require a change in the factor of the assessment.

I would like to note that the House Agriculture Committee passed this bill unanimously last week through the excellent work of my friends GEORGE NETHERCUTT and BOB GOODLATTE.

The House Agriculture Committee informs me that their intention is to achieve full House passage of this legislation by suspension of the rules next week. I want to make a special plea to the Senate to pass this simple, much-needed, thoroughly bipartisan, and noncontroversial legislation in the 108th Congress. Toward that end, I request that the bill be held at the desk per Rule 14.

Again, as Government encourages agricultural producers to become more responsible for their own marketing and research programs, this common sense legislation is needed to ensure the continued success of these programs.

At this time I thank the people in Oklahoma who have contacted me in support of this legislation: Jeramy Rich with the Oklahoma Farm Bureau, Ray Wulf with the Oklahoma Farmers Union, Tim Bartram with the Oklahoma Wheat Growers Association, Mark Hodges with Oklahoma Wheat Commission, Mike Kubicek with the Oklahoma Peanut Commission, as well my Legislative Assistant Mike Ference who assisted me with this legislation. I appreciate all of their support.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2866

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Commodity Assessment, Protection, and Reform Act''.

**SEC. 2. COLLECTION OF COMMODITY ASSESSMENTS.**

Subtitle B of title I of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7931 et seq.) is amended by adding at the end the following:

**''SEC. 1210. COLLECTION OF COMMODITY ASSESSMENTS.**

''(a) DEFINITION OF ASSESSMENT.—In this section, the term 'assessment' means funds that are—

''(1) collected with respect to a specific commodity in accordance with this Act;

''(2) paid by the first purchaser of the commodity in accordance with a State law or this title; and

''(3) not collected through a tax or other revenue collection activity of a State.

''(b) AUTHORITY TO COLLECT COMMODITY ASSESSMENTS FROM MARKETING ASSISTANCE LOANS.—The Secretary may collect commodity assessments from the proceeds of a marketing assistance loan made under this subtitle in accordance with an agreement between the Secretary and the State.''.

## SUBMITTED RESOLUTIONS

### SENATE RESOLUTION 441—EXPRESSING THE SENSE OF THE SENATE THAT OCTOBER 17, 1984, THE DATE OF THE RESTORATION BY THE FEDERAL GOVERNMENT OF FEDERAL RECOGNITION TO THE CONFEDERATED TRIBES OF COOS, LOWER UMPQUA, AND SIUSLAW INDIANS, SHOULD BE MEMORIALIZED

Mr. SMITH (for himself and Mr. WYDEN) submitted the following resolution; which was referred to the Committee on Indian Affairs:

S. RES. 441

Whereas the Coos, Lower Umpqua, and Siuslaw Restoration Act (25 U.S.C. 714 et seq.), which was signed by the President on October 17, 1984, restored Federal recognition to the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians;

Whereas the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians historically inhabited land now in the State of Oregon, from Fivemile Point in the south to Tenmile Creek in the north, west to the Pacific Ocean, then east to the crest of the Coast Range, encompassing the watersheds of the Coos River, the Umpqua River to Weatherly Creek, the Siuslaw River, the coastal tributaries between Tenmile Creek and Fivemile Point, and portions of the Coquille watershed;

Whereas in addition to restoring Federal recognition, that Act and other Federal Indian statutes have provided the means for the Confederated Tribes to achieve the goals of cultural restoration, economic self-sufficiency, and the attainment of a standard of living equivalent to that enjoyed by other citizens of the United States;

Whereas by enacting the Coos, Lower Umpqua, and Siuslaw Restoration Act (25 U.S.C. 714 et seq.), the Federal Government—

(1) declared that the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians were eligible for all Federal services and benefits provided to federally recognized tribes;

(2) provided the means to establish a tribal reservation; and

(3) granted the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians self-government for the betterment of tribal members, including the ability to set tribal rolls;

Whereas the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians have embraced Federal recognition and self-sufficiency statutes and are actively working to better the lives of tribal members; and

Whereas economic self-sufficiency, which was the goal of restoring Federal recognition for the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, is being realized through many projects: Now, therefore, be it

*Resolved*, That it is the sense of the Senate that October 17, 1984, should be memorialized as the date on which the Federal Government restored Federal recognition to the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians.

### SENATE RESOLUTION 442—APOLOGIZING TO THE VICTIMS OF LYNCHING AND THEIR DESCENDANTS FOR THE SENATE'S FAILURE TO ENACT ANTI-LYNCHING LEGISLATION

Ms. LANDRIEU (for herself and Mr. ALLEN) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 442

Whereas the crime of lynching succeeded slavery as the ultimate expression of racism in the United States following Reconstruction;

Whereas lynching was a common practice in the United States until the middle of the 20th century;

Whereas lynching was a crime that occurred throughout the Nation, with documented incidents in all but 4 States;

Whereas at least 4,749 people, predominantly African-Americans, were reported lynched in the United States between 1881 and 1964;

Whereas 99 percent of all lynch mob perpetrators escaped any form of punishment from State or local officials;

Whereas lynching prompted African-Americans to form the National Association for the Advancement of Colored People (NAACP) and prompted members of B'nai B'rith to found the Anti-Defamation League;

Whereas nearly 200 anti-lynching bills were introduced in Congress during the first half of the 20th century;

Whereas between 1890 and 1952, 7 Presidents petitioned Congress to end lynching;

Whereas between 1920 and 1940, the House of Representatives passed 3 strong anti-lynching measures;

Whereas protection against lynching was the minimum and most basic of Federal responsibilities, yet the Senate failed to enact anti-lynching legislation despite repeated requests by civil rights groups, Presidents, and the House of Representatives;

Whereas until the recent publication of ''Without Sanctuary: Lynching Photography in America'', the victims of lynching have never been properly acknowledged;

Whereas only by coming to terms with its history can the United States effectively champion human rights abroad; and

Whereas an apology offered in the spirit of true repentance moves the Nation toward reconciliation and may become central to a new understanding upon which improved racial relations can be forged: Now, therefore, be it

*Resolved*, That the Senate—

(1) apologizes to the victims and survivors of lynching for its failure to enact anti-lynching legislation;

(2) expresses its deepest sympathies and most solemn regrets to the descendants of victims of lynching whose ancestors were deprived of life, human dignity, and the constitutional protections accorded all other citizens of the United States; and

(3) remembers the history of lynching, to ensure that these personal tragedies will be neither forgotten nor repeated.

Ms. LANDRIEU. Mr. President, it has been said that ''ignorance, allied with power, is the most ferocious enemy justice can have.'' Sadly, this great body, in which I am so proud to serve, once allied its power with ignorance. In so doing, it condoned unspeakable injustice that diminished the role of the Senate, and heaped untold suffering on Americans sorely in need of our protection. I am referring to the Senate's role in the decades long campaign to end lynching in this country. On three separate occasions, our colleagues in the House of Representatives passed anti-lynching legislation with overwhelming majorities. On all three of those occasions members of this Chamber blocked, or filibustered the consideration of that legislation.

Between 1882, when records first began to be collected, and 1968 four thousand, seven hundred and forty-two Americans lost their lives to lynch mobs. The experts believe that undocumented cases might double that figure. The vast majority of those killed—three thousand, four hundred and forty-five Americans—were African American. Sadly, a disproportionate number of those deaths occurred within my home region of the South, but 46 of the 50 States experienced these atrocities. Lynching was truly a national problem deserving the attention of the national legislative bodies.

Frederick Douglas seems to have captured the real reason for this dark period of our national history. These acts of terrorism were not so much an admission of African Americans' weakness, but of their perseverance—and indomitable spirit. Douglas wrote: It is proof that the Negro is not standing still. He is not dead, but alive and active. He is not drifting with the current, but manfully resisting it . . . A ship rotting at anchor meets with no resistance, but when she sails on the sea, she has to buffet opposing billows. The enemies of the Negro see that he is making progress and they naturally wish to stop him and keep him in just what they consider his proper place.

It was, in short, the ability of African Americans to overcome Jim Crow laws, to overcome share-cropping, to overcome second-class citizenship that provoked such savagery. Its an old story that repeats itself throughout human history. Whether it was the Israelites in Egypt, the colonial empires in Africa or America's own history of Apartheid, rulers that assume superiority inevitably prove themselves models of mankind's basest instincts.

It should also be noted that this was not only an outrage committed against African Americans. The effort to dehumanize people on the basis of race or ethnicity did not limit itself to black Americans. In fact, the single largest incident of lynching occurred in my home state, in my home town of New Orleans. Yet, the victims were not black. They were Italians. On March 14, 1891, 11 Italian immigrants were lynched in the City of New Orleans. These immigrants too were thought to

be less than human, and were simply rounded up as a group of the ''usual suspects'' following the murder of Police Superintendent David Hennessy. Already edgy from a media prompted mafia scare, a mob surrounded the prison and eventually battered down the doors. An armed group of twenty five men overtook the guards and summarily riddled the bodies of the 11 Italian prisoners with bullets. Their bodies were hung on lampposts outside the prison. Eyewitnesses described the cheering of the crowd as deafening.

Of course, the attacks on that day are an example of mob justice and its irrational prejudices. However, in nearly 25 percent of all lynchings the motivations of the attackers came down to a bald attempt to maintain a caste system in this country. The NAACP cataloged the reported motivations for these forms of attack. They included: using disrespectful, insulting, slanderous, boastful, threatening or incendiary language; insubordination, impertinence, or improper demeanor, a sarcastic grin, laughing at the wrong place, a prolonged silence; refusing to take off one's hat to a white person or to give the right-of-way when encountering a white on the sidewalk; resisting assault by whites; being troublesome generally; disorderly conduct, petty theft or drunkenness; writing an improper letter to a white person; paying undue or improper attention to a white female; accusing a white man of writing love letters to a black woman; or living or keeping company with a white woman; turning or refusing to turn state's evidence; testifying or bringing suit against a white person; being related to a person accused of a crime and already lynched; political activities; union organizing; conjuring; discussing a lynching; gambling; operating a house of ill fame; a personal debt; refusing to accept an employment offer; vagrancy; refusing to give up one's farm; conspicuously displaying one's wealth or property; and trying to act like a white man.

In many instances, lynchings were little more than a way to remove an economic competitor and confiscate his property. This was true in a number of cases in Mississippi involving successful African American landowners, and in one notorious Hawaiian case involving a Japanese immigrant competing with established white businessmen.

Many of my colleagues might wonder why now? After all, some of these incidents are over a century old. There are two reasons. First, this aspect of American history is not well known or understood. As reconstruction concluded in the South, a very ugly struggle to reassert the social structure that preceded the Civil War took place. A great deal of it occurred with the tacit consent of the Federal Government, and the most part, the media either shared in the common prejudice, or simply ignored what was occurring.

Fortunately, we have the publication of the book ''Without Sanctuary'' by James Allen, Hilton Als, Congressman John Lewis, and Leon F. Litwak to serve as a focal point for our attention to this neglected history. This is a difficult book to examine. It serves as a catalog of inhuman crime perpetrated by very ordinary citizens. Looking at anything so tragic as the victims of these crimes would be disturbing, but that is not what will leave a lasting impression. It is the festive attitude, the smiles and smirks on the crowd gathered around the victim. They clearly take a perverse pride in this act. Hannah Arendt, the famous political philosopher, subtitled her book on Adolph Eichman's war crimes trials ''A Report on the Banality of Evil.'' When you look at the expressions on the faces of the murderers in these photos, that is all you can think about. These are not crazed killers, these are rational people going about their everyday lives, and committing unspeakable acts in the process.

Photos like these serve to remind us that a healthy society is not something that is built up over time, and then like a great monument, exists for centuries. Rather, a healthy society is a thin levee that must be constantly improved and maintained to hold back the worst instincts of mankind. I think the horrible pictures that came from Abu Gharib prison served as a reminder of this lesson. This book is even greater testimony that atrocities are not events that only occur in far off places. They can and have occurred here in the United States.

The only way to maintain a healthy society is to acknowledge and discuss our mistakes. No one would defend the Senate's filibuster of anti-lynching legislation today. I would like to think that any Senator who did so would quickly be looking for another line of work. However, despite the change of attitude we have taken no action to remedy our wrong. That is the purpose of this resolution today. I would like to extend my deep thanks to my courageous colleague, the Junior Senator from Virginia. He seemed to instantly understand the significance of this effort, and I believed it was vitally important to proceed with this resolution in a bipartisan manner. His input and drive have made this effort much more successful than it otherwise would have been.

It is our intention to submit this legislation today, and use the recess period to confer with our colleagues about it. When we reconvene next year, we will resubmit this resolution, and at that time, we hope to have the co-sponsorship of every member of this body. Then, we will endeavor to enact the resolution to commemorate Black History month.

I said ignorance allied with power is justice's most ferocious enemy. Yet imagine what truth allied with power can bring. For over 50 years, African American achievement was seen as a threat to the majority of people in this nation. It is time to close the book on that tragic period and begin to celebrate the achievements of black Americans as accomplishments that have bettered us all. I believe that this resolution of apology will be an important symbolic step in this process of healing and growth.

Mr. ALLEN. Mr. President, I rise today to speak in support of an anti-lynching resolution that Ms. LANDRIEU and I are submitting. Like all of my colleagues, I am proud to be a member of this Chamber, not for its grandeur, but because of the grand ideas it represents. It is here, on these same small desks where big ideas have been debated and argued through the course of our history for the greater good of our Nation. It is here in this Chamber, on this floor, where our Democracy reaches consensus from what our Founding Fathers called, the ''Will of the People.''

In the history of this Chamber, there have been many great minds and defenders of Freedom. One of those whose words still reverberate here today is Daniel Webster. Standing in the old Senate Chamber, Webster told his colleagues in 1834 that a ''representative of the people is a sentinel on the watch tower of liberty.''

I know that Webster was right. I believe throughout our history, the United States Senate has been a watchtower on Liberty. It has been venerated as the World's greatest deliberative body. The formidable British Member of Parliament, William Gladstone called the American Senate, ''that remarkable body, the most remarkable of all the inventions of modern politics.''

But unfortunately, this august body has a dark stain on its history. A stain that was borne of hatred, racism, and the blood of mostly African Americans who died from a noose, from flogging, from a torch, from the evil heart of men.

I rise today to offer a formal and heartfelt apology to all the victims of lynchings in our history—black, white, Jewish, Indian, Hispanic and Asian and the failure of the U.S. Senate to take action when action was most deserved.

The term ''lynching'' has its roots in my own beloved Commonwealth. Charles Lynch, a Virginia planter during the Revolutionary War meted out his own form of justice without a court. In Bedford County, Lynch persecuted Tories and Tory sympathizers without trial.

Soon, others who desired to thwart the rule of law and to trample on the rights of the accused used ''lynchings'' against the innocent or lightly accused.

This body stood by as these vile killings captivated front-page headlines, drew crowds with morbid curiosity and left thousands of mostly African Americans hanging from trees or bleeding to death from the lashings of whips. This body failed to act and in not acting, failed to protect the Liberty of which Webster spoke.

According to the archives of Tuskegee Institute, 4,749 Americans died by lynching starting in 1882. Two-thirds of these lynchings were perpetrated against black men, women, and children. Many were not lone acts by a few white men, but angry mobs whipped into frenzies by skewed mentalities of right and wrong.

One of those who suffered this awful fate was an African American named Zachariah Walker of Coatesville, VA. In 1911, Walker was dragged from a hospital bed where he was recovering from a gunshot wound. Accused of killing a white man—which he claimed was in self-defense—Walker was burned alive at the stake without a trial.

Such horrendous acts were not a regional phenomenon. Yes, it is true that most lynchings took place in Southern States. But, Illinois, Ohio, Michigan and even this city of Washington, D.C. experienced mob violence, making lynching not just a regional problem, but a national crime.

Yet, despite the national scope of these acts, the U.S. Senate failed to pass one of the estimated 200 anti-lynching bills introduced in Congress in the first half of the Twentieth Century. Three strong pieces of legislation were passed by the other body, but faced filibusters and failures to reach cloture on this Senate floor.

In the winter of 1937–38, one grisly lynching captivated this body's attention. The crime had happened in Mississippi the previous April. Two African Americans were taken from a jail. They were whipped and torched. Senator Champ Clark of Missouri posted photographs of the brutality back here in the cloakroom. For six weeks, this body debated. For six weeks! In the end, those in favor of an anti-lynching bill failed to enact cloture over the filibustering of others.

Historians will no doubt disagree as to a single reason that U.S. Senators blocked legislation to make lynching a federal crime. My desire here is not to get into motivations.

Regardless of their reasoning, our reason tells us that it was wrong and it is time to right it.

Thankfully, justice in our Nation has moved forward and left such despicable acts to history. But, this story can never be complete without an acknowledgement from this body that it failed to protect individual freedoms and rights.

It ignored the protection our Founding Fathers extended to those accused of crimes and the bedrock foundation of our system of justice that everyone is innocent until proven guilty. And, it turned its back on the most helpless in our society at a time when the weak needed protection.

I stand here today as a proud Senator from a Southern State. I look around this chamber and know of its abundance of honor and integrity throughout its history. Yet, we have not been perfect, especially on this issue. We failed our American ideals and we failed our citizens.

As Ephesians teaches us, ''all things that are reproved are made manifest by the light.''

My fellow Senators, this apology is too long in coming. I respectfully urge all of us to reprove this omission of history as a strong step never to be repeated in our future.

## SENATE RESOLUTION 443—TO AUTHORIZE TESTIMONY, DOCUMENT PRODUCTION, AND LEGAL REPRESENTATION IN UNITED STATES V. ROBERTO MARTIN

Mr. FRIST (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 443

Whereas, in the case of *United States* v. *Roberto Martin,* Crim. No. 04–CR–20075, pending in Federal District Court in the Southern District of Florida, testimony and documents have been requested from an employee in the office of Senator Bob Graham;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§ 288b(a) and 288c(a)(2), the Senate may direct its counsel to represent employees of the Senate with respect to any subpoena, order, or request for testimony relating to their official responsibilities;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate may, by the judicial or administrative process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate may promote the administration of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

*Resolved* that employees of Senator Graham's office from whom testimony or the production of documents may be required are authorized to testify and produce documents in the case of *United States* v. *Roberto Martin,* except concerning matters for which a privilege should be asserted.

SEC. 2. The Senate Legal Counsel is authorized to represent Senator Graham's staff in the action referenced in section one of this resolution.

## SENATE RESOLUTION 444—CONGRATULATING AND COMMENDING THE VETERANS OF FOREIGN WARS OF THE UNITED STATES AND ITS NATIONAL COMMANDER-IN-CHIEF, JOHN FURGESS OF TENNESSEE

Mr. FRIST (for himself, Mr. DASCHLE, Mr. SPECTER, Mr. ALEXANDER, and Mr. REID) submitted the following resolution; which was considered and agreed to:

S. RES. 444

Whereas the organization now known as the Veterans of Foreign Wars of the United States (''VFW'') was founded in Columbus, Ohio, on September 29, 1899;

Whereas the VFW represents approximately 2,000,000 veterans of the Armed Forces who served overseas in World War I, World War II, Korea, Vietnam, the Persian Gulf War, Bosnia, Iraq, and Afghanistan; and

Whereas the VFW has, for the past 105 years, provided voluntary and unselfish service to the Armed Forces and to veterans, communities, States, and the United States, and has worked toward the betterment of veterans in general and society as a whole: Now, therefore, be it

*Resolved,* That the Senate—

(1) recognizes the historic significance of the 105th anniversary of the founding of the Veterans of Foreign Wars of the United States (''VFW'');

(2) congratulates the VFW on achieving that milestone;

(3) commends the approximately 2,000,000 veterans who belong to the VFW and thanks them for their service to their fellow veterans and the United States; and

(4) recognizes the VFW's national Commander-in-Chief, John Furgess, for his service and dedication to the veterans of the United States.

## AMENDMENTS SUBMITTED AND PROPOSED

SA 3755. Mr. GRAHAM, of Florida submitted an amendment intended to be proposed by him to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; which was ordered to lie on the table.

SA 3756. Mr. GRAHAM, of Florida submitted an amendment intended to be proposed by him to the bill S. 2845, supra; which was ordered to lie on the table.

SA 3757. Mr. GRAHAM, of Florida submitted an amendment intended to be proposed by him to the bill S. 2845, supra; which was ordered to lie on the table.

SA 3758. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 2845, supra; which was ordered to lie on the table.

SA 3759. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 2845, supra; which was ordered to lie on the table.

SA 3760. Mr. SARBANES (for himself and Mr. BINGAMAN) submitted an amendment intended to be proposed by him to the bill S. 2845, supra; which was ordered to lie on the table.

SA 3761. Mr. SPECTER (for himself and Mrs. FEINSTEIN) proposed an amendment to the bill S. 2845, supra.

SA 3762. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 2845, supra; which was ordered to lie on the table.

SA 3763. Mr. COLEMAN submitted an amendment intended to be proposed by him to the bill S. 2845, supra.

SA 3764. Mr. FITZGERALD submitted an amendment intended to be proposed by him to the bill S. 2806, making appropriations for the Departments of Transportation and Treasury, the Executive Office of the President, and certain independent agencies for the fiscal year ending September 30, 2005, and for other purposes; which was ordered to lie on the table.

SA 3765. Mr. ALLARD submitted an amendment intended to be proposed by him to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; which was ordered to lie on the table.

SA 3766. Mr. MCCAIN proposed an amendment to the bill S. 2845, supra.

SA 3767. Mr. LAUTENBERG proposed an amendment to the bill S. 2845, supra.

SA 3768. Mr. BAUCUS (for himself, Mr. ROBERTS, Mr. CRAIG, and Mr. BINGAMAN) submitted an amendment intended to be proposed by him to the bill S. 2845, supra; which was ordered to lie on the table.

SA 3769. Mr. SPECTER submitted an amendment intended to be proposed by him to the bill S. 2845, supra; which was ordered to lie on the table.

SA 3770. Mr. AKAKA submitted an amendment intended to be proposed by him to the bill S. 2845, supra; which was ordered to lie on the table.

SA 3771. Mr. BINGAMAN (for himself and Mr. DOMENICI) submitted an amendment intended to be proposed by him to the bill S. 2845, supra; which was ordered to lie on the table.

SA 3772. Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill S. 2845, supra; which was ordered to lie on the table.

SA 3773. Mr. BURNS proposed an amendment to amendment SA 3766 proposed by Mr. MCCAIN to the bill S. 2845, supra.

SA 3774. Mr. MCCAIN (for himself and Mr. LIEBERMAN) proposed an amendment to the bill S. 2845, supra.

SA 3775. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 2845, supra; which was ordered to lie on the table.

SA 3776. Mr. BURNS (for himself and Mr. BUNNING) submitted an amendment intended to be proposed by him to the bill S. 2845, supra; which was ordered to lie on the table.

SA 3777. Ms. SNOWE (for herself, Mr. ROBERTS, Ms. MIKULSKI, and Mrs. FEINSTEIN) submitted an amendment intended to be proposed by her to the bill S. 2845, supra; which was ordered to lie on the table.

SA 3778. Mr. ALLARD submitted an amendment intended to be proposed by him to the bill S. 2845, supra; which was ordered to lie on the table.

SA 3779. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 2845, supra; which was ordered to lie on the table.

SA 3780. Mr. ALLARD submitted an amendment intended to be proposed by him to the bill S. 2845, supra; which was ordered to lie on the table.

SA 3781. Mr. WARNER (for himself and Mr. STEVENS) proposed an amendment to the bill S. 2845, supra.

SA 3782. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 2845, supra; which was ordered to lie on the table.

SA 3783. Mr. SESSIONS (for Mr. INOUYE) proposed an amendment to the bill S. 2436, to reauthorize the Native American Programs Act of 1974.

SA 3784. Mr. SESSIONS (for Mr. CRAIG) proposed an amendment to the bill S. 2639, to reauthorize the Congressional Award Act.

SA 3785. Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; which was ordered to lie on the table.

SA 3786. Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 2845, supra; which was ordered to lie on the table.

SA 3787. Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 2845, supra; which was ordered to lie on the table.

SA 3788. Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 2845, supra; which was ordered to lie on the table.

SA 3789. Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 2845, supra; which was ordered to lie on the table.

SA 3790. Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 2845, supra; which was ordered to lie on the table.

SA 3791. Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 2845, supra; which was ordered to lie on the table.

SA 3792. Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 2845, supra; which was ordered to lie on the table.

SA 3793. Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 2845, supra; which was ordered to lie on the table.

## TEXT OF AMENDMENTS

**SA 3755.** Mr. GRAHAM of Florida submitted an amendment intended to be proposed by him to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; which was ordered to lie on the table; as follows:

On page 94, line 14, insert before the period the following: '', whether expressed in terms of geographic region, in terms of function, or in other terms''.

On page 95, line 3, insert after the period the following: ''Each notice on a center shall set forth the mission of such center, the area of intelligence responsibility of such center, and the proposed structure of such center.''.

On page 96, line 7, insert ''of the center and the personnel of the center'' after ''control''.

On page 96, between lines 8 and 9, insert the following:

(5) If the Director of a national intelligence center determines at any time that the authority, direction, and control of the Director over the center is insufficient to accomplish the mission of the center, the Director shall promptly notify the National Intelligence Director of that determination.

On page 96, strike line 15 and all that follows through page 97, line 2, and insert the following:

(1) develop and unify a strategy for the collection and analysis of all-source intelligence;

(2) integrate intelligence collection, analysis, and planning for operations, both inside and outside the United States;

(3) develop interagency plans for the collection and analysis of all-source intelligence, which plans shall—

(A) involve more than one department, agency, or element of the executive branch (unless otherwise directed by the President); and

(B) include the mission, objectives to be achieved, courses of action, coordination of agencies operational activities, recommendations for operational plans, and assignment of departmental or agency responsibilities;

(4) ensure that the collection of all-source intelligence and the conduct of operations are informed by the analysis of all-source intelligence; and

On page 98, beginning on line 20, strike ''to the extent practicable, approve the request'' and insert ''to the maximum extent possible. If a request is denied, the head of the department, agency, or element concerned shall provide the National Intelligence Director with a justification of the denial of such request. The National Intelligence Director may submit any request so denied to the National Security Council for resolution''.

On page 99, between lines 20 and 21, insert the following:

(g) REVIEW AND MODIFICATION OF CENTERS.—(1) Not less often than once each year, the National Intelligence Director shall review the area of intelligence responsibility assigned to each national intelligence center under this section in order to determine whether or not such area of responsibility continues to meet intelligence priorities established by the National Security Council.

(2) Not less often than once each year, the National Intelligence Director shall review the staffing and management of each national intelligence center under this section in order to determine whether or not such staffing or management remains appropriate for the accomplishment of the mission of such center.

(3) The National Intelligence Director may at any time recommend to the President a modification of the area of intelligence responsibility assigned to a national intelligence center under this section. The National Intelligence Director shall make any such recommendation through, and with the approval of, the National Security Council.

(h) SEPARATE BUDGET ACCOUNT.—The National Intelligence Director shall, in accordance with procedures to be issued by the Director in consultation with the congressional intelligence committees, include in the National Intelligence Program budget a separate account for each national intelligence center under this section.

On page 99, line 21, strike ''(g)'' and insert ''(i)''.

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**SA 3756.** Mr. GRAHAM of Florida submitted an amendment intended to be proposed by him to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; which was ordered to lie on the table; as follows:

On page 108, between lines 8 and 9, insert the following:

**SEC. 153. ADDITIONAL EDUCATION AND TRAINING REQUIREMENTS.**

(a) FINDINGS.—Congress makes the following findings:

(1) Foreign language education is essential for the development of a highly-skilled workforce for the intelligence community.

(2) Since September 11, 2001, the need for language proficiency levels to meet required national security functions has been raised, and the ability to comprehend and articulate technical and scientific information in foreign languages has become critical.

(b) LINGUISTIC REQUIREMENTS.—(1) The National Intelligence Director shall—

(A) identify the linguistic requirements for the National Intelligence Authority;

(B) identify specific requirements for the range of linguistic skills necessary for the intelligence community, including proficiency in scientific and technical vocabularies of critical foreign languages; and

(C) develop a comprehensive plan for the Authority to meet such requirements through the education, recruitment, and training of linguists.

(2) In carrying out activities under paragraph (1), the Director shall take into account education grant programs of the Department of Defense and the Department of Education that are in existence as of the date of the enactment of this Act.

(3) Not later than one year after the date of the enactment of this Act, and annually thereafter, the Director shall submit to Congress a report on the requirements identified under paragraph (1), including the success of the Authority in meeting such requirements. Each report shall notify Congress of any additional resources determined by the Director to be required to meet such requirements.

(4) Each report under paragraph (3) shall be in unclassified form, but may include a classified annex.

(c) PROFESSIONAL INTELLIGENCE TRAINING.—The National Intelligence Director shall require the head of each element and component within the National Intelligence Authority who has responsibility for professional intelligence training to periodically review and revise the curriculum for the professional intelligence training of the senior and intermediate level personnel of such element or component in order to—

(1) strengthen the focus of such curriculum on the integration of intelligence collection and analysis throughout the Authority; and

(2) prepare such personnel for duty with other departments, agencies, and element of the intelligence community.

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**SA 3757.** Mr. GRAHAM of Florida submitted an amendment intended to be proposed by him to the bill S. 2845, to reform the intelligence community and the intelligence-related activities of the United States Government, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. . TSA FIELD OFFICE INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS REPORT.**

Within 90 days after the date of enactment of this Act, the Secretary of Homeland Security shall transmit a report to the Congress, which may be transmitted in classified and redacted formats, setting forth—

(1) a descriptive list of each field office of the Transportation Security Administration, including its location, staffing, and facilities;

(2) an analysis of the information technology and telecommunications capabilities, equipment, and support available at each such office, including—

(A) whether the office has access to broadband telecommunications;

(B) whether the office has the ability to access Transportation Security Administration databases directly;

(C) the means available to the office for communicating and sharing information and other data on a real time basis with the Transportation Security Administration's national, regional, and State offices as well as with other Transportation Security Administration field offices;

(D) the means available to the office for communicating witli other Federal, State, and local government offices with transportation security related responsibilities; and

(E) whether and to what extent computers in the office are linked through a local area, network or otherwise, and whether the information technology resources available to the office are adequate to enable it to carry out its functions and purposes; and

(3) an assessment of current and future needs of the Transportation Security Administration to provide adequate information technology and telecommunications facilities, equipment, and support to its field offices, and an estimate of the costs of meeting those needs.

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**SA 3758.** Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; which was ordered to lie on the table; as follows:

On page 4, strike lines 5 through 16 and insert the following:

(2) The term ''foreign intelligence'' means information gathered, and activities conducted, relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities.

(3) The term ''counterintelligence'' means—

(A) foreign intelligence gathered, and activities conducted, to protect against espionage, other intelligence activities, sabotage, or assassinations conducted by or on behalf of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities; and

(B) information gathered, and activities conducted, to prevent the interference by or disruption of foreign intelligence activities of the United States by foreign government or elements thereof, foreign organizations, or foreign persons, or international terrorists.

On page 6, line 12, strike ''counterintelligence or''.

On page 7, beginning on line 5, strike ''the Office of Intelligence of the Federal Bureau of Investigation'' and insert ''the Directorate of Intelligence of the Federal Bureau of Investigation''.

On page 8, between lines 6 and 7, insert the following:

(8) The term ''counterespionage'' means counterintelligence designed to detect, destroy, neutralize, exploit, or prevent espionage activities though identification, penetration, deception, and prosecution (in accordance with the criminal law) of individuals, groups, or organizations conducting, or suspected of conducting, espionage activities.

(9) The term ''intelligence operation'' means activities conducted to facilitate the gathering of foreign intelligence or the conduct of covert action (as that term is defined in section 503(e) of the National Security Act of 1947 (50 U.S.C. 413b(e)).

(10) The term ''collection and analysis requirements'' means any subject, whether general or specific, upon which there is a need for the collection of intelligence information or the production of intelligence.

(11) The term ''collection and analysis tasking'' means the assignment or direction of an individual or activity to perform in a specified way to achieve an intelligence objective or goal.

(12) The term ''certified intelligence officer'' means a professional employee of an element of the intelligence community engaged in intelligence activities who meets standards and qualifications set by the National Intelligence Director.

On page 120, beginning on line 17, strike '', subject to the direction and control of the President,''.

On page 123, between lines 6 and 7, insert the following:

(e) DISCHARGE OF IMPROVEMENTS.—(1) The Director of the Federal Bureau of Investigation shall carry out subsections (b) through (d) through the Executive Assistant Director of the Federal Bureau of Investigation for Intelligence or such other official as the Director of the Federal Bureau of Investigation designates as the head of the Directorate of Intelligence of the Federal Bureau of Investigation.

(2) The Director of the Federal Bureau of Investigation shall carry out subsections (b) through (d) under the joint direction, supervision, and control of the Attorney General and the National Intelligence Director.

(3) The Director of the Federal Bureau of Investigation shall report to both the Attorney General and the National Intelligence Director regarding the activities of the Federal Bureau of Investigation under subsections (b) through (d).

On page 123, line 7, strike ''(e)'' and insert ''(f)''.

On page 123, line 17, strike ''(f)'' and insert ''(g)''.

On page 126, between lines 20 and 21, insert the following:

**SEC. 206. DIRECTORATE OF INTELLIGENCE OF THE FEDERAL BUREAU OF INVESTIGATION.**

(a) DIRECTORATE OF INTELLIGENCE OF FEDERAL BUREAU OF INVESTIGATION.—The element of the Federal Bureau of Investigation known as of the date of the enactment of this Act is hereby redesignated as the Directorate of Intelligence of the Federal Bureau of Investigation.

(b) HEAD OF DIRECTORATE.—The head of the Directorate of Intelligence shall be the Executive Assistant Director of the Federal Bureau of Investigation for Intelligence or such other official within the Federal Bureau of Investigation as the Director of the Federal Bureau of Investigation shall designate.

(c) RESPONSIBILITIES.—The Directorate of Intelligence shall be responsible for the following:

(1) The discharge by the Federal Bureau of Investigation of all national intelligence programs, projects, and activities of the Bureau.

(2) The discharge by the Bureau of the requirements in section 105B of the National Security Act of 1947 (50 U.S.C. 403–5b).

(3) The oversight of Bureau field intelligence operations.

(4) Human source development and management by the Bureau.

(5) Collection by the Bureau against nationally-determined intelligence requirements.

(6) Language services.

(7) Strategic analysis.

(8) Intelligence program and budget management.

(9) The intelligence workforce.

(10) Any other responsibilities specified by the Director of the Federal Bureau of Investigation or specified by law.

(d) STAFF.—The Directorate of Intelligence shall consist of such staff as the Director of the Federal Bureau of Investigation considers appropriate for the activities of the Directorate.

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**SA 3759.** Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; which was ordered to lie on the table; as follows:

On page 44, strike lines 22 and 23 and insert the following:

(4) The General Counsel of the Intelligence Community.

On page 45, strike lines 1 through 10 and insert the following:

(6) The Officer for Civil Rights and Civil Liberties of the Intelligence Community.

(7) The Privacy Officer of the Intelligence Community.

(8) The Chief Information Officer of the Intelligence Community.

(9) The Chief Human Capital Officer of the Intelligence Community.

(10) The Chief Financial Officer of the Intelligence Community.

On page 51, strike lines 6 through 24 and insert the following:

**SEC. 124. GENERAL COUNSEL OF THE INTELLIGENCE COMMUNITY.**

(a) GENERAL COUNSEL OF INTELLIGENCE COMMUNITY.—There is a General Counsel of the Intelligence Community who shall be appointed from civilian life by the President,

by and with the advice and consent of the Senate.

(b) PROHIBITION ON DUAL SERVICE AS GENERAL COUNSEL OF ANOTHER AGENCY.—The individual serving in the position of General Counsel of the Intelligence Community may not, while so serving, also serve as the General Counsel of any other department, agency, or element of the United States Government.

(c) SCOPE OF POSITION.—The General Counsel of the Intelligence Community is the chief legal officer of the intelligence community.

(d) FUNCTIONS.—The General Counsel of the Intelligence Community shall perform such functions as the National Intelligence Director may prescribe.

On page 52, strike line 21 and all that follows through page 53, line 7, and insert the following:

**SEC. 126. OFFICER FOR CIVIL RIGHTS AND CIVIL LIBERTIES OF THE INTELLIGENCE COMMUNITY.**

(a) OFFICER FOR CIVIL RIGHTS AND CIVIL LIBERTIES OF INTELLIGENCE COMMUNITY.—There is an Officer for Civil Rights and Civil Liberties of the Intelligence Community who shall be appointed by the President.

(b) SUPERVISION.—The Officer for Civil Rights and Civil Liberties of the Intelligence Community shall report directly to the National Intelligence Director.

(c) DUTIES.—The Officer for Civil Rights and Civil Liberties of the Intelligence Community shall—

On page 53, beginning on line 14, strike ''National Intelligence Authority;'' and insert ''elements of the intelligence community; and''.

On page 53, beginning on line 18, strike ''within the National Intelligence Program''.

On page 53, strike lines 20 through 24.

On page 54, line 1, strike ''the Authority'' and insert ''the elements of the intelligence community''.

On page 54, line 11, strike ''the Authority'' and insert ''the elements of the intelligence community''.

On page 55, strike lines 1 through 15 and insert the following:

**SEC. 127. PRIVACY OFFICER OF THE INTELLIGENCE COMMUNITY.**

(a) PRIVACY OFFICER OF INTELLIGENCE COMMUNITY.—There is a Privacy Officer of the Intelligence Community who shall be appointed by the National Intelligence Director.

(b) DUTIES.—(1) The Privacy Officer of the Intelligence Community shall have primary responsibility for the privacy policy of the intelligence community, including in the relationships among the elements of the intelligence community.

On page 56, strike lines 9 through 16 and insert the following:

**SEC. 128. CHIEF INFORMATION OFFICER OF THE INTELLIGENCE COMMUNITY.**

(a) CHIEF INFORMATION OFFICER OF INTELLIGENCE COMMUNITY.—There is a Chief Information Officer of the Intelligence Community who shall be appointed by the National Intelligence Director.

(b) DUTIES.—The Chief Information Officer of the Intelligence Community shall—

On page 57, strike line 1 and all that follows through page 59, line 7, and insert the following:

**SEC. 129. CHIEF HUMAN CAPITAL OFFICER OF THE INTELLIGENCE COMMUNITY.**

(a) CHIEF HUMAN CAPITAL OFFICER OF INTELLIGENCE COMMUNITY.—There is a Chief Human Capital Officer of the Intelligence Community who shall be appointed by the National Intelligence Director.

(b) DUTIES.—The Chief Human Capital Officer of the Intelligence Community shall—

(1) have the functions and authorities provided for Chief Human Capital Officers under sections 1401 and 1402 of title 5, United States Code, with respect to the elements of the intelligence community; and

(2) otherwise advise and assist the National Intelligence Director in exercising the authorities and responsibilities of the Director with respect to the workforce of the intelligence community.

**SEC. 130. CHIEF FINANCIAL OFFICER OF THE INTELLIGENCE COMMUNITY.**

(a) CHIEF FINANCIAL OFFICER OF INTELLIGENCE COMMUNITY.—There is a Chief Financial Officer of the Intelligence Community who shall be designated by the President, in consultation with the National Intelligence Director.

(b) DESIGNATION REQUIREMENTS.—The designation of an individual as Chief Financial Officer of the Intelligence Community shall be subject to applicable provisions of section 901(a) of title 31, United States Code.

(c) AUTHORITIES AND FUNCTIONS.—The Chief Financial Officer of the Intelligence Community shall have such authorities, and carry out such functions, with respect to the elements of the intelligence community as are provided for an agency Chief Financial Officer by section 902 of title 31, United States Code, and other applicable provisions of law.

(d) COORDINATION WITH NIA COMPTROLLER.—(1) The Chief Financial Officer of the Intelligence Community shall coordinate with the Comptroller of the National Intelligence Authority in exercising the authorities and performing the functions provided for the Chief Financial Officer under this section.

(2) The National Intelligence Director shall take such actions as are necessary to prevent duplication of effort by the Chief Financial Officer of the Intelligence Community and the Comptroller of the National Intelligence Authority.

(e) INTEGRATION OF FINANCIAL SYSTEMS.—Subject to the supervision, direction, and control of the National Intelligence Director, the Chief Financial Officer of the Intelligence Community shall take appropriate actions to ensure the timely and effective integration of the financial systems of the elements of the intelligence community as soon as possible after the date of the enactment of this Act.

On page 60, strike lines 5 through 13 and insert the following:

**SEC. 141. INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY.**

(a) OFFICE OF INSPECTOR GENERAL OF INTELLIGENCE COMMUNITY.—There is within the National Intelligence Authority an Office of the Inspector General of the Intelligence Community.

(b) PURPOSE.—The purpose of the Office of the Inspector General of the Intelligence Community is to—

On page 60, line 19, insert ''and'' at the end.

On page 60, line 22, strike ''and'' at the end.

On page 60, strike line 23 and all that follows through page 61, line 2.

On page 62, strike lines 1 through 7 and insert the following:

(c) INSPECTOR GENERAL OF INTELLIGENCE COMMUNITY.—(1) There is an Inspector General of the Intelligence Community, who shall be the head of the Office of the Inspector General of the Intelligence Community, who shall be appointed by the President, by and with the advice and consent of the Senate.

On page 62, beginning on line 12 strike ''National Intelligence Authority'' and insert ''intelligence community''.

On page 63, beginning on line 2, strike ''National Intelligence Authority'' and insert ''Intelligence Community''.

On page 63, beginning on line 8, strike '', the relationships among'' and all that follows through ''the other elements of the intelligence community'' and insert ''and the relationships among the elements of the intelligence community''.

On page 64, line 11, strike ''National Intelligence Authority'' and insert ''Intelligence Community''.

On page 65, line 7, strike ''National Intelligence Authority'' and insert ''Intelligence Community''.

On page 65, beginning on line 12, strike ''the National Intelligence Authority, and of any other element of the intelligence community within the National Intelligence Program,'' and insert ''any element of the intelligence community''.

On page 66, line 2, strike ''the National Intelligence Authority'' and insert ''an element of the intelligence community''.

On page 67, beginning on line 9, strike ''National Intelligence Authority'' and insert ''Intelligence Community''.

On page 68, line 9, strike ''National Intelligence Authority'' and insert ''Intelligence Community''.

On page 69, line 3, strike ''National Intelligence Authority'' and insert ''Intelligence Community''.

On page 69, line 22, strike ''National Intelligence Authority'' and insert ''Intelligence Community''.

On page 70, line 1, strike ''National Intelligence Authority'' and insert ''Intelligence Community''.

On page 70, beginning on line 12, strike ''National Intelligence Authority'' and insert ''elements of the intelligence community''.

On page 71, beginning on line 16, strike ''the Authority'' and insert ''any element of the intelligence community''.

On page 72, beginning on line 3, strike ''the Authority'' and all that follows through line 8 and insert ''an element of the intelligence community or in a relationship between the elements of the intelligence community.''.

On page 72, beginning on line 21, strike ''Authority official who holds or held a position in the Authority'' and insert ''an official of an element of the intelligence community who holds or held in such element a position''.

On page 73, strike line 24 and all that follows through page 74, line 5, and insert the following:

(5)(A) An employee of an element of the intelligence community, an employee of any entity other than an element of the intelligence community who is assigned or detailed to an element of the intelligence community, or an employee of a contractor of an element of the intelligence community who intends to report to Congress a complaint or information with respect to an urgent concern may report such complaint or information to the Inspector General.

On page 77, beginning on line 17, strike ''National Intelligence Authority'' and insert ''Intelligence Community''.

On page 77, strike line 19 and all that follows through page 78, line 2, and insert the following:

**SEC. 142. OMBUDSMAN OF THE INTELLIGENCE COMMUNITY.**

(a) OMBUDSMAN OF INTELLIGENCE COMMUNITY.—There is within the National Intelligence Authority an Ombudsman of the Intelligence Community who shall be appointed by the National Intelligence Director.

(b) DUTIES.—The Ombudsman of the Intelligence Community shall—

On page 78, beginning on line 6, strike ''the National Intelligence Authority'' and all that follows through ''National Intelligence Program,'' and insert ''any element of the intelligence community''.

On page 78, beginning on line 14, strike ''the Authority'' and all that follows through ''National Intelligence Program,'' and insert ''any element of the intelligence community''.

On page 78, beginning on line 20, strike ''the Authority'' and all that follows through ''National Intelligence Program,'' and insert ''any element of the intelligence community''.

On page 79, beginning on line 4, strike ''National Intelligence Authority'' and insert ''Intelligence Community''.

On page 79, line 7, strike ''National Intelligence Authority'' and insert ''Intelligence Community''.

On page 79, strike lines 18 through 25 and insert the following:

(B) The elements of the intelligence community, including the divisions, offices, programs, officers, and employees of such elements.

On page 80, line 8, strike ''National Intelligence Authority'' and insert ''Intelligence Community''.

On page 80, beginning on line 14, strike ''National Intelligence Authority'' and insert ''Intelligence Community''.

On page 80, beginning on line 20, strike ''the National Intelligence Authority'' and all that follows through ''National Intelligence Program,'' and insert ''any element of the intelligence community''.

On page 81, beginning on line 9, strike ''National Intelligence Authority'' and insert ''Intelligence Community''.

On page 204, strike lines 1 through 3 and insert the following:

**SEC. 312. CONFORMING AMENDMENT RELATING TO CHIEF FINANCIAL OFFICER OF THE INTELLIGENCE COMMUNITY.**

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**SA 3760.** Mr. SARBANES (for himself and Mr. BINGAMAN) submitted an amendment intended to be proposed by him to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; which was ordered to lie on the table; as follows:

On page 158, line 5, strike ''and''.

On page 158, line 9, strike the period and insert ''; and''.

On page 158, insert between lines 9 and 10, the following:

(C) each proposal reviewed by the Board under subsection (d)(1) that—

(i) the Board advised against implementation; and

(ii) notwithstanding such advice, actions were taken to implement.

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**SA 3761.** Mr. SPECTER (for himself and Mrs. FEINSTEIN) proposed an amendment to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; as follows:

On page 10, between lines 16 and 17, insert the following:

(d) TERM OF OFFICE; REMOVAL.—(1) The term of service of the National Intelligence Director shall be ten years.

(2) An individual may not serve more than one term of service as National Intelligence Director.

(3) Paragraphs (1) and (2) shall apply with respect to any individual appointed as National Intelligence Director after the date of the enactment of this Act.

(4) If the individual serving as Director of Central Intelligence on the date of the enactment of this Act is the first person appointed as National Intelligence Director under this section, the date of appointment of such individual as National Intelligence Director shall be deemed to be the date of the commencement of the term of service of such individual as National Intelligence Director.

On page 10, line 17, strike ''(d)'' and insert ''(e)''.

On page 11, line 3, strike ''(e)'' and insert ''(f)''.

On page 11, line 5, strike ''subsection (c)'' and insert ''subsection (e)''.

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**SA 3762.** Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; which was ordered to lie on the table; as follows:

On page 97, between lines 18 and 19, insert the following:

(3) The National Intelligence Director shall establish formal mechanisms to ensure the regular sharing of information and analysis by national intelligence centers having adjacent geographic regions of intelligence responsibility or otherwise having significant connections in areas of intelligence responsibility.

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**SA 3763.** Mr. COLEMAN submitted an amendment intended to be proposed by him to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; as follows:

On page 117, strike line 1 and all that follows through page 118, line 7.

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**SA 3764.** Mr. FITZGERALD submitted an amendment intended to be proposed by him to the bill S. 2806, making appropriations for the Departments of Transportation and Treasury, the Executive Office of the President, and certain independent agencies for the fiscal year ending September 30, 2005, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. _____. STATE-BY-STATE COMPARISON OF HIGHWAY CONSTRUCTION COSTS.**

(a) COLLECTION OF DATA.—

(1) IN GENERAL.—The Administrator of the Federal Highway Administration (referred to in this section as the ''Administrator'') shall collect from States any bid price data that is necessary to make State-by-State comparisons of highway construction costs.

(2) DATA REQUIRED.—In determining which data to collect and the procedures for collecting data, the Administrator shall take into account the data collection deficiencies identified in the report prepared by the Government Accountability Office numbered GAO-04-113R.

(b) REPORT.—

(1) IN GENERAL.—The Administrator shall submit to Congress an annual report on the bid price data collected under subsection (a).

(2) INCLUSIONS.—The report shall include—

(A) State-by-State comparisons of highway construction costs for the previous fiscal year (including the cost to construct a 1-mile road segment of a standard design, as determined by the Administrator); and

(B) a description of the competitive bidding procedures used in each State.

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**SA 3765.** Mr. ALLARD submitted an amendment intended to be proposed by him to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; which was ordered to lie on the table; as follows;

At the appropriate place, insert the following:

**SEC. ___. HOMELAND SECURITY GEOGRAPHIC INFORMATION.**

(a) FINDINGS.—Congress finds that—

(1) geographic technologies and geographic data improve government capabilities to detect, plan, prepare, and respond to disasters in order to save lives and protect property;

(2) geographic data improves the ability of information technology applications and systems to enhance public security in a cost-effective manner; and

(3) geographic information preparedness in the United States, and specifically in the Department of Homeland Security, is insufficient because of—

(A) inadequate geographic data compatibility;

(B) insufficient geographic data sharing; and

(C) technology interoperability barriers.

(b) HOMELAND SECURITY GEOGRAPHIC INFORMATION.—Section 703 of the Homeland Security Act of 2002 (6 U.S.C. 343) is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''The Chief Information''; and

(2) by adding at the end the following:

''(b) GEOGRAPHIC INFORMATION FUNCTIONS.—

''(1) DEFINITION.—In this subsection, the term 'geographic information' means the information systems that involve locational data, such as maps or other geospatial information resources.

''(2) OFFICE OF GEOSPATIAL MANAGEMENT.—

''(A) ESTABLISHMENT.—The Office of Geospatial Management is established within the Office of the Chief Information Officer.

''(B) GEOSPATIAL INFORMATION OFFICER.—

''(i) APPOINTMENT.—The Office of Geospatial Management shall be administered by the Geospatial Information Officer, who shall be appointed by the Secretary and serve under the direction of the Chief Information Officer.

''(ii) FUNCTIONS.—The Geospatial Information Officer shall assist the Chief Information Officer in carrying out all functions under this section and in coordinating the geographic information needs of the Department.

''(C) COORDINATION OF GEOGRAPHIC INFORMATION.—The Chief Information Officer shall establish and carry out a program to provide for the efficient use of geographic information, which shall include—

''(i) providing such geographic information as may be necessary to implement the critical infrastructure protection programs;

''(ii) providing leadership and coordination in meeting the geographic information requirements of those responsible for planning, prevention, mitigation, assessment and response to emergencies, critical infrastructure protection, and other functions of the Department; and

''(iii) coordinating with users of geographic information within the Department to assure interoperability and prevent unnecessary duplication.

''(D) RESPONSIBILITIES.—In carrying out this subsection, the responsibilities of the Chief Information Officer shall include—

''(i) coordinating the geographic information needs and activities of the Department;

''(ii) implementing standards, as adopted by the Director of the Office of Management and Budget under the processes established under section 216 of the E-Government Act of

2002 (44 U.S.C. 3501 note), to facilitate the interoperability of geographic information pertaining to homeland security among all users of such information within—

''(I) the Department;

''(II) State and local government; and

''(III) the private sector;

''(iii) coordinating with the Federal Geographic Data Committee and carrying out the responsibilities of the Department pursuant to Office of Management and Budget Circular A–16 and Executive Order 12906; and

''(iv) making recommendations to the Secretary and the Executive Director of the Office for State and Local Government Coordination and Preparedness on awarding grants to—

''(I) fund the creation of geographic data; and

''(II) execute information sharing agreements regarding geographic data with State, local, and tribal governments.

''(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subsection for each fiscal year.''.

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**SA 3766.** Mr. MCCAIN proposed an amendment to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; as follows:

At the appropriate place, insert the following:

**TITLE —PUBLIC SAFETY SPECTRUM**

**SEC. —01. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This title may be cited as the ''Spectrum Availability for Emergency-Response and Law-Enforcement To Improve Vital Emergency Services Act'' or the ''SAVE LIVES Act''.

(b) TABLE OF CONTENTS.—The table of contents for this title is as follows:



**SEC. —02. FINDINGS.**

The Congress finds the following:

(1) In its final report, the 9-11 Commission advocated that Congress pass legislation providing for the expedited and increased assignment of radio spectrum for public safety purposes. The 9-11 Commission stated that this spectrum was necessary to improve communications between local, State and Federal public safety organizations and public safety organizations operating in neighboring jurisdictions that may respond to an emergency in unison.

(2) Specifically, the 9-11 Commission report stated ''The inability to communicate was a critical element at the World Trade Center, Pentagon and Somerset County, Pennsylvania, crash sites, where multiple agencies and multiple jurisdictions responded. The occurrence of this problem at three very different sites is strong evidence that compatible and adequate communications among public safety organizations at the local, State, and Federal levels remains an important problem.''.

(3) In the Balanced Budget Act of 1997, the Congress directed the FCC to allocate spectrum currently being used by television broadcasters to public safety agencies to use for emergency communications. This spectrum has specific characteristics that make it an outstanding choice for emergency communications because signals sent over these frequencies are able to penetrate walls and travel great distances, and can assist multiple jurisdictions in deploying interoperable communications systems.

(4) This spectrum will not be fully available to public safety agencies until the completion of the digital television transition. The need for this spectrum is greater than ever. The nation cannot risk further loss of life due to public safety agencies' first responders' inability to communicate effectively in the event of another terrorist act or other crisis, such as a hurricane, tornado, flood, or earthquake.

(5) In the Balanced Budget Act of 1997, Congress set a date of December 31, 2006, for the termination of the digital television transition. Under current law, however, the deadline will be extended if fewer than 85 percent of the television households in a market are able to continue receiving local television broadcast signals.

(6) Federal Communications Commission Chairman Michael K. Powell testified at a hearing before the Senate Commerce, Science, and Transportation Committee on September 8, 2004, that, absent government action, this extension may allow the digital television transition to continue for ''decades'' or ''multiples of decades''.

(7) The Nation's public safety and welfare cannot be put off for ''decades'' or ''multiples of decades''. The Federal government should ensure that this spectrum is available for use by public safety organizations by January 1, 2009.

(8) Any plan to end the digital television transition would be incomplete if it did not ensure that consumers would be able to continue to enjoy over-the-air broadcast television with minimal disruption. If broadcasters air only a digital signal, some consumers may be unable to view digital transmissions using their analog-only television set. Local broadcasters are truly an important part of our homeland security and often an important communications vehicle in the event of a national emergency. Therefore, consumers who rely on over-the-air television, particularly those of limited economic means, should be assisted.

(9) The New America Foundation has testified before Congress that the cost to assist these 17.4 million exclusively over-the-air households to continue to view television is less than $1 billion dollars for equipment, which equates to roughly 3 percent of the Federal revenue likely from the auction of the analog television spectrum.

(10) Specifically, the New America Foundation has estimated that the Federal Government's auction of this spectrum could yield $30-to-$40 billion in revenue to the Treasury. Chairman Powell stated at the September 8, 2004, hearing that ''estimates of the value of that spectrum run anywhere from $30 billion to $70 billion''.

(11) Additionally, there will be societal benefits with the return of the analog broadcast spectrum. Former FCC Chairman Reed F. Hundt, at an April 28, 2004, hearing before the Senate Commerce, Science, and Transportation Committee, testified that this spectrum ''should be the fit and proper home of wireless broadband''. Mr. Hundt continued, ''Quite literally, [with this spectrum] the more millions of people in rural America will be able to afford Big Broadband Internet access, the more hundreds of millions of people in the world will be able to afford joining the Internet community.''.

(12) Due to the benefits that would flow to the Nation's citizens from the Federal Government reclaiming this analog television spectrum—including the safety of our Nation's first responders and those protected by first responders, additional revenues to the Federal treasury, millions of new jobs in the telecommunications sector of the economy, and increased wireless broadband availability to our Nation's rural citizens—Congress finds it necessary to set January 1, 2009, as a firm date for the return of this analog television spectrum.

**SEC. 3. SETTING A SPECIFIC DATE FOR THE AVAILABILITY OF SPECTRUM FOR PUBLIC SAFETY ORGANIZATIONS AND CREATING A DEADLINE FOR THE TRANSITION TO DIGITAL TELEVISION.**

(a) IN GENERAL.—Section 309(j)(14) of the Communications Act of 1934 (47 U.S.C. 309(j)(14)) is amended—

(1) by striking ''2006.'' in subparagraph (A) and inserting ''2008.'';

(2) by striking subparagraph (B) and redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C);

(3) by striking ''subparagraph (A) or (B),'' in subparagraph (B), as redesignated, and inserting ''subparagraph (A),'';

(4) by striking ''subparagraph (C)(i),'' in subparagraph (C), as redesignated, and inserting ''subparagraph (B)(i),''; and

(5) by adding at the end the following:

''(D) ACCELERATION OF DEADLINE FOR PUBLIC SAFETY USE.—

''(i) Notwithstanding subparagraph (A), the Commission shall take all action necessary to complete by December 31, 2007—

''(I) the return of television station licenses operating on channels between 764 and 776 megaHertz and between 794 and 806 megaHertz; and

''(II) assignment of the electromagnetic spectrum between 764 and 776 megahertz, and between 794 and 806 megahertz, for public safety services.

''(ii) Notwithstanding subparagraph (A), the Commission may modify, reassign, or require the return of, the television station licenses assigned to frequencies between 758 and 764 megahertz, 776 and 782 megahertz, and 788 and 794 megahertz as necessary to permit operations by public safety services on frequencies between 764 and 776 megahertz and between 794 and 806 megahertz, after the date of enactment of the SAVES LIVES Act, but such modifications, reassignments, or returns may not take effect until after December 31, 2007.''.

(b) CERTAIN COMMERCIAL USE SPECTRUM.—The Commission shall assign the spectrum described in section 337(a)(2) of the Communications Act of 1934 (47 U.S.C. 337(a)(2)) allocated for commercial use by competitive bidding pursuant to section 309(j) of that Act (47 U.S.C. 309(j)) no later than 1 year after the Commission transmits the report required by section 4(a) to the Congress.

**SEC. —04. STUDIES OF COMMUNICATIONS CAPABILITIES AND NEEDS.**

(a) IN GENERAL.—The Commission, in consultation with the Secretary of Homeland Security, shall conduct a study to assess

strategies that may be used to meet public safety communications needs, including—

(1) the short-term and long-term need for additional spectrum allocation for Federal, State, and local first responders, including an additional allocation of spectrum in the 700 megaHertz band;

(2) the need for a nationwide interoperable broadband mobile communications network;

(3) the ability of public safety entities to utilize wireless broadband applications; and

(4) the communications capabilities of first receivers such as hospitals and health care workers, and current efforts to promote communications coordination and training among the first responders and the first receivers.

(b) REALLOCATION STUDY.—The Commission shall conduct a study to assess the advisability of reallocating any amount of spectrum in the 700 megaHertz band for unlicensed broadband uses. In the study, the Commission shall consider all other possible users of this spectrum, including public safety.

(c) REPORT.—The Commission shall report the results of the studies, together with any recommendations it may have, to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce within 1 year after the date of enactment of this Act.

**SEC. —05. STATUTORY AUTHORITY FOR THE DEPARTMENT OF HOMELAND SECURITY'S "SAFECOM" PROGRAM.**

Section 302 of the Homeland Security Act of 2002 (6 U.S.C. 182) is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''The''; and

(2) by adding at the end the following:

''(b) SAFECOM AUTHORIZED.—

''(1) IN GENERAL.—In carrying out subsection (a), the Under Secretary shall establish a program to address the interoperability of communications devices used by Federal, State, tribal, and local first responders, to be known as the Wireless Public Safety Interoperability Communications Program, or 'SAFECOM'. The Under Secretary shall coordinate the program with the Director of the Department of Justice's Office of Science and Technology and all other Federal programs engaging in communications interoperability research, development, and funding activities to ensure that the program takes into account, and does not duplicate, those programs or activities.

''(2) COMPONENTS.—The program established under paragraph (1) shall be designed—

''(A) to provide research on the development of a communications system architecture that would ensure the interoperability of communications devices among Federal, State, tribal, and local officials that would enhance the potential for a coordinated response to a national emergency;

''(B) to support the completion and promote the adoption of mutually compatible voluntary consensus standards developed by a standards development organization accredited by the American National Standards Institute to ensure such interoperability; and

''(C) to provide for the development of a model strategic plan that could be used by any State or region in developing its communications interoperability plan.

''(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this subsection—

''(A) $22,105,000 for fiscal year 2005;

''(B) $22,768,000 for fiscal year 2006;

''(C) $23,451,000 for fiscal year 2007;

''(D) $24,155,000 for fiscal year 2008; and

''(E) $24,879,000 for fiscal year 2009.

''(c) NATIONAL BASELINE STUDY OF PUBLIC SAFETY COMMUNICATIONS INTEROPERABILITY.—By December 31, 2005, the Under Secretary of Homeland Security for Science and Technology shall complete a study to develop a national baseline for communications interoperability and develop common grant guidance for all Federal grant programs that provide communications-related resources or assistance to State and local agencies, any Federal programs conducting demonstration projects, providing technical assistance, providing outreach services, providing standards development assistance, or conducting research and development with the public safety community with respect to wireless communications. The Under Secretary shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce containing the Under Secretary's findings, conclusions, and recommendations from the study.''.

**SEC. —06. GRANT PROGRAM TO PROVIDE ENHANCED INTEROPERABILITY OF COMMUNICATIONS FOR FIRST RESPONDERS.**

(a) IN GENERAL.—The Secretary of Homeland Security shall establish a program to help State, local, tribal, and regional first responders acquire and deploy interoperable communications equipment, purchase such equipment, and train personnel in the use of such equipment. The Secretary, in cooperation with the heads of other Federal departments and agencies who administer programs that provide communications-related assistance programs to State, local, and tribal public safety organizations, shall develop and implement common standards to the greatest extent practicable.

(b) APPLICATIONS.—To be eligible for assistance under the program, a State, local, tribal, or regional first responder agency shall submit an application, at such time, in such form, and containing such information as the Under Secretary of Homeland Security for Science and Technology may require, including—

(1) a detailed explanation of how assistance received under the program would be used to improve local communications interoperability and ensure interoperability with other appropriate Federal, State, local, tribal, and regional agencies in a regional or national emergency;

(2) assurance that the equipment and system would—

(A) not be incompatible with the communications architecture developed under section 302(b)(2)(A) of the Homeland Security Act of 2002;

(B) would meet any voluntary consensus standards developed under section 302(b)(2)(B) of that Act; and

(C) be consistent with the common grant guidance established under section 302(b)(3) of the Homeland Security Act of 2002.

(c) GRANTS.—The Under Secretary shall review applications submitted under subsection (b). The Secretary, pursuant to an application approved by the Under Secretary, may make the assistance provided under the program available in the form of a single grant for a period of not more than 3 years.

**SEC. —07. DIGITAL TRANSITION PUBLIC SAFETY COMMUNICATIONS GRANT AND CONSUMER ASSISTANCE FUND.**

(a) IN GENERAL.—There is established on the books of the Treasury a separate fund to be known as the ''Digital Transition Consumer Assistance Fund'', which shall be administered by the Secretary, in consultation with the Assistant Secretary of Commerce for Communications and Information.

(b) CREDITING OF RECEIPTS.—The Fund shall be credited with the amount specified in section 309(j)(8)(D) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(D)).

(c) FUND AVAILABILITY.—

(1) APPROPRIATIONS.—

(A) CONSUMER ASSISTANCE PROGRAM.—There are appropriated to the Secretary from the Fund such sums, not to exceed $1,000,000,000, as are required to carry out the program established under section 8 of this Act.

(B) PSO GRANT PROGRAM.—To the extent that amounts available in the Fund exceed the amount required to carry out that program, there are authorized to be appropriated to the Secretary of Homeland Security, such sums as are required to carry out the program established under section 6 of this Act, not to exceed an amount, determined by the Director of the Office of Management and Budget, on the basis of the findings of the National Baseline Interoperability study conducted by the SAFECOM Office of the Department of Homeland Security.

(2) REVERSION OF UNUSED FUNDS.—Any auction proceeds in the Fund that are remaining after the date on which the programs under section 6 and 8 of this Act terminate, as determined by the Secretary of Homeland Security and the Secretary of Commerce respectively, shall revert to and be deposited in the general fund of the Treasury.

(d) DEPOSIT OF AUCTION PROCEEDS.—Paragraph (8) of section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) is amended—

(1) by inserting ''or subparagraph (D)'' in subparagraph (A) after ''subparagraph (B)''; and

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

''(D) DISPOSITION OF CASH PROCEEDS FROM AUCTION OF CHANNELS 52 THROUGH 69.—Cash proceeds attributable to the auction of any eligible frequencies between 698 and 806 megaHertz on the electromagnetic spectrum conducted after the date of enactment of the SAVE LIVES Act shall be deposited in the Digital Transition Consumer Assistance Fund established under section 7 of that Act.''.

**SEC. —08. DIGITAL TRANSITION PROGRAM.**

(a) IN GENERAL.—The Secretary, in consultation with the Commission and the Director of the Office of Management and Budget, shall establish a program to assist households—

(1) in the purchase or other acquisition of digital-to-analog converter devices that will enable television sets that operate only with analog signal processing to continue to operate when receiving a digital signal;

(2) in the payment of a one-time installation fee (not in excess of the industry average fee for the date, locale, and structure involved, as determined by the Secretary) for installing the equipment required for residential reception of services provided by a multichannel video programming distributor (as defined in section 602(13) of the Communications Act of 1934 (47 U.S.C. 602(13)); or

(3) in the purchase of any other device that will enable the household to receive over-the-air digital television broadcast signals, but in an amount not in excess of the average per-household assistance provided under paragraphs (1) and (2).

(b) PROGRAM CRITERIA.—The Secretary shall ensure that the program established under subsection (a)—

(1) becomes publicly available no later than January 1, 2008;

(2) gives first priority to assisting lower income households (as determined by the Director of the Bureau of the Census for statistical reporting purposes) who rely exclusively on over-the-air television broadcasts;

(3) gives second priority to assisting other households who rely exclusively on over-the-air television broadcasts;

(4) is technologically neutral; and

(5) is conducted at the lowest feasible administrative cost.

**SEC. —09. LABEL REQUIREMENT FOR ANALOG TELEVISION SETS.**

(a) IN GENERAL.—Section 303 of the Communications Act of 1934 (47 U.S.C. 303) is amended by adding at the end the following:

''(z) Require that any apparatus described in paragraph (s) sold or offered for sale in or affecting interstate commerce after September 30, 2005, that is incapable of receiving and displaying a digital television broadcast signal without the use of an external device that translates digital television broadcast signals into analog television broadcast signals have affixed to it and, if it is sold or offered for sale in a container, affixed to that container, a label that states that the apparatus will be incapable of displaying over-the-air television broadcast signals received after December 31, 2008, without the purchase of additional equipment.''.

(b) SHIPMENT PROHIBITED.—Section 330 of the Communications Act of 1934 (47 U.S.C. 330) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

''(d) SHIPMENT OF UNLABELED OBSOLESCENT TELEVISION SETS.—No person shall ship in interstate commerce or manufacture in the United States any apparatus described in section 303(s) of this Act except in accordance with rules prescribed by the Commission under section 303(z) of this Act.''.

(c) POINT OF SALE WARNING.—The Commission, in consultation with the Federal Trade Commission, shall require the display at, or in close proximity to, any commercial retail sales display of television sets described in section 303(z) of the Communications Act of 1934 (47 U.S.C. 303(z)) sold or offered for sale in or affecting interstate commerce after September 30, 2005, of a printed notice that clearly and conspicuously states that the sets will be incapable of displaying over-the-air television broadcast signals received after December 31, 2008, without the purchase or lease of additional equipment.

**SEC. —10. REPORT ON CONSUMER EDUCATION PROGRAM REQUIREMENTS.**

Within 1 year after the date of enactment of this Act, the Assistant Secretary of Commerce for Communications and Information, after consultation with the Commission, shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce containing recommendations with respect to—

(1) an effective program to educate consumers about the transition to digital television broadcast signals and the impact of that transition on consumers' choices of equipment to receive such signals;

(2) the need, if any, for Federal funding for such a program;

(3) the date of commencement and duration of such a program; and

(4) what department or agency should have the lead responsibility for conducting such a program.

**SEC. —11. FCC TO ISSUE DECISION IN CERTAIN PROCEEDINGS.**

The Commission shall issue a final decision before—

(1) January 1, 2005, in the Matter of Carriage of Digital Television Broadcast Signals; Amendments to Part 76 of the Commission's Rules, CS Docket No. 98-120;

(2) January 1, 2005, in the Matter of Public Interest Obligations of TV Broadcast Licensees, MM Docket No. 99-360; and

(3) January 1, 2006, in the Implementation of the Satellite Home Viewer Improvement Act of 1999; Local Broadcast Signal Carriage Issues, CS Docket No. 00-96.

**SEC. —12. DEFINITIONS.**

In this title:

(1) COMMISSION.—The term ''Commission'' means the Federal Communications Commission.

(2) FUND.—The term ''Fund'' means the Digital Transition Consumer Assistance Fund established by section 7.

(3) SECRETARY.—Except where otherwise expressly provided, the term ''Secretary'' means the Secretary of Commerce.

**SEC. —13. EFFECTIVE DATE.**

This title takes effect on the date of enactment of this Act.

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**SA 3767.** Mr. LAUTENBERG proposed an amendment to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; as follows:

On page 10, line 2, insert ''(1)'' after ''DIRECTOR.—''.

On page 10, line 5, insert '', for a term of up to 5 years'' after ''Senate''.

On page 10, after line 5, insert the following:

(2) The National Intelligence Director may be reappointed by the President for additional terms of up to 5 years each, by and with the consent of the Senate.

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**SA 3768.** Mr. BAUCUS (for himself, Mr. ROBERTS, Mr. CRAIG, and Mr. BINGAMAN) submitted an amendment intended to be proposed by him to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following new section:

**SEC. 353. ANNUAL REPORT ON THE ALLOCATION OF RESOURCES WITHIN THE OFFICE OF FOREIGN ASSETS CONTROL.**

(a) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of the Treasury should allocate the resources of the Office of Foreign Assets Control to enforce the economic and trade sanctions of the United States in a manner that enforcing such sanctions—

(1) against al Qaeda and groups affiliated with al Qaeda is the highest priority of the Office;

(2) against members of the insurgency in Iraq is the second highest priority of the Office; and

(3) against Iran is the third highest priority of the Office.

(b) REQUIREMENT FOR ANNUAL REPORT.—Not later than 180 days after the date of enactment of this Act, and annually thereafter, the Secretary of the Treasury, in consultation with the National Intelligence Director, shall submit to Congress a report on the allocation of resources within the Office of Foreign Assets Control.

(c) CONTENT OF ANNUAL REPORT.—An annual report required by subsection (b) shall include—

(1) a description of—

(A) the allocation of resources within the Office of Foreign Assets Control to enforce the economic and trade sanctions of the United States against terrorist organizations and targeted foreign countries during the fiscal year prior to the fiscal year in which such report is submitted; and

(B) the criteria on which such allocation is based;

(2) a description of any proposed modifications to such allocation; and

(3) an explanation for any such allocation that is not based on prioritization of threats determined using appropriate criteria, including the likelihood that—

(A) a terrorist organization or targeted foreign country—

(i) will sponsor or plan a direct attack against the United States or the interests of the United States; or

(ii) is participating in or maintaining a nuclear, biological, or chemical weapons development program; or

(B) a targeted foreign country—

(i) is financing, or allowing the financing, of a terrorist organization within such country; or

(ii) is providing safe haven to a terrorist organization within such country.

(d) EFFECTIVE DATE.—Notwithstanding section 341 or any other provision of this Act, this section shall take effect on the date of the enactment of this Act.

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**SA 3769.** Mr. SPECTER submitted an amendment intended to be proposed by him to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**CLARIFICATION OF PRIVATE RIGHT OF ACTION AGAINST TERRORIST STATES; DAMAGES.**

(a) RIGHT OF ACTION.—Section 1605 of title 28, United States Code, is amended—

(1) in subsection (f), in the first sentence, by inserting ''or (h)'' after ''subsection (a)(7)''; and

(2) by adding at the end the following:

''(h) CERTAIN ACTIONS AGAINST FOREIGN STATES OR OFFICIALS, EMPLOYEES, OR AGENTS OF FOREIGN STATES—

''(1) CAUSE OF ACTION.—

''(A) CAUSE OF ACTION.—A foreign state designated as a state sponsor of terrorism under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), or an official, employee, or agent of such a foreign state, shall be liable to a national of the United States (as that term is defined in section 101(a)(22) of the Immigration and Nationality Act) or the national's legal representative for personal injury or death caused by acts of that foreign state, or by that official, employee, or agent while acting within the scope of his or her office, employment, or agency, for which the courts of the United States may maintain jurisdiction under subsection (a)(7) for money damages. The removal of a foreign state from designation as a state sponsor of terrorism under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371) shall not terminate this cause of action.

''(B) DISCOVERY.—The provisions of subsection (g) apply to actions brought under subparagraph (A).

''(C) NATIONALITY OF CLAIMANT.—No action shall be maintained under subparagraph (A) arising from acts of a foreign state or an official, employee, or agent of a foreign state if neither the claimant nor the victim was a national of the United States (as that term is defined in section 101(a)(22) of the Immigration and Nationality Act) when such acts occurred.

''(2) DAMAGES.—In an action brought under paragraph (1) against a foreign state or an official, employee, or agent of a foreign

state, the foreign state, official, employee, or agent, as the case may be, may be held liable for money damages in such action, which may include economic damages, solatium, damages for pain and suffering, and, notwithstanding section 1606, punitive damages. In all actions brought under paragraph (1), a foreign state shall be vicariously liable for the actions of its officials, employees, or agents.

''(3) APPEALS.—An appeal in the courts of the United States in an action brought under paragraph (1) may be made—

''(A) only from a final decision under section 1291 of this title, and then only if filed with the clerk of the district court within 30 days after the entry of such final decision; and

''(B) in the case of an appeal from an order denying the immunity of a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state, only if filed under section 1292 of this title.''.

(b) CONFORMING AMENDMENT.—Section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997, as contained in section 101(a) of Division A of Public Law 104–208 (110 Stat. 3009–172; 28 U.S.C. 1605 note), is repealed.

**PROPERTY SUBJECT TO ATTACHMENT EXECUTION.**

Section 1610 of title 28, United States Code, is amended by adding at the end the following:

''(g) PROPERTY INTERESTS IN CERTAIN ACTIONS.—

''(1) IN GENERAL.—A property interest of a foreign state, or agency or instrumentality of a foreign state, against which a judgment is entered under section 1605(a)(7), including a property interest that is a separate juridical entity, is subject to execution upon that judgment as provided in this section, regardless of—

''(A) the level of economic control over the property interest by the government of the foreign state;

''(B) whether the profits of the property interest go to that government;

''(C) the degree to which officials of that government manage the property interest or otherwise have a hand in its daily affairs,

''(D) whether that government is the real beneficiary of the conduct of the property interest; or

''(E) whether establishing the property interest as a separate entity would entitle the foreign state to benefits in United States courts while avoiding its obligations.

''(2) U.S. SOVEREIGN IMMUNITY INAPPLICABLE.—Any property interest of a foreign state, or agency or instrumentality of a foreign state, to which paragraph (1) applies shall not be immune from execution upon a judgment entered under section 1605(a)(7) because the property interest is regulated by the United States Government by reason of action taken against that foreign state under the Trading With the Enemy Act or the International Emergency Economic Powers Act.''

**APPOINTMENT OF SPECIAL MASTERS.**

(a) VICTIMS OF CRIME ACT.—Section 1404C(a)(3) of the Victims of Crime Act of 1984 (42 U.S.C. 10603c(a)(3)) is amended by striking ''December 21, 1988, with respect to which an investigation or'' and inserting ''October 23, 1983, with respect to which an investigation or civil or criminal''.

(b) JUSTICE FOR MARINES.—The Attorney General of the United States is authorized and directed to transfer such Victims of Crime Act Funds to the Administrator of the US District Court for District of Columbia as may be required to carry out the Orders of United States District Judge Royce C. Lamberth appointing Special Masters in the matter of Peterson, et al v. The Islamic Republic of Iran, Case No 01CV02094 (RCL)''

**LIS PENDENS.**

(a) In every action filed in a United States Court in which jurisdiction is alleged under 28 U.S.C. §1605(a)(7) the filing of a ''Notice of Pending Action Pursuant to 28 U.S.C. §1605(a)(7)'' to which shall be attached a copy of the Complaint filed in the action, shall have the effect of establishing a lien of lis pendens upon any real property or tangible personal property located within that judicial district titled in the name of any defendant or titled in the name of any entity controlled by any such defendant, provided that such notice contains a statement of said entities controlled by any such defendant. A Notice of Pending Action Pursuant to 28 U.S.C. §1605(a)(7) shall be filed by the Clerk of the District Court in the same manner as any pending action and shall be indexed listing as defendants all named defendants and all entities listed as controlled by any defendant.

(b) Liens established as provided in this section shall be enforceable as provided by 28 U.S.C. Ch.111.

**APPLICABILITY.**

(a) IN GENERAL.—The amendments made by this Act apply to any claim for which a foreign state is not immune under section 1605(a)(7) of title 28, United States Code, arising before, on, or after the date of the enactment of this Act.

(b) Prior Causes of Action–In the case of any action that—

(1) was brought in a timely manner but was dismissed before the enactment of this Act for failure to state a cause of action, and

(2) would be cognizable by reason of the amendments made by this Act, the 10-year limitation period provided under section 1605(f) of title 28, United States Code, shall be tolled during the period beginning on the date on which the action was first brought and ending 60 days after the date of the enactment of this Act.

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**SA 3770.** Mr. AKAKA submitted an amendment intended to be proposed by him to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; which was ordered to lie on the table; as follows:

At the end, insert the following new title:

**TITLE IV—SAFE STORAGE OF RADIOLOGICAL MATERIALS**

**SECTION 401. DISPOSAL OF CERTAIN LOW-LEVEL RADIOACTIVE WASTE.**

(a) FINDINGS.—Congress makes the following findings:

(1) According to the report of the National Commission on Terrorist Attacks Upon the United States, more than two dozen terrorist groups, including al Qaeda, are pursuing chemical, biological, radiological, and nuclear materials.

(2) According to the report of the National Commission on Terrorist Attacks Upon the United States, the United States is a prime target for weapons made with chemical, biological, radiological, and nuclear materials.

(3) The Department of Energy estimates that about 14,000 sealed sources of greater-than-Class C low-level radioactive waste (as defined in section 61.55 of title 10, Code of Federal Regulations) will become unwanted and will have to be disposed of through the Offsite Source Recovery Program by 2010.

(4) The Department of Energy—

(A) does not have the resources or storage facility to recover and store all unwanted sources of greater-than-Class C low-level radioactive waste; and

(B) has not identified a permanent disposal facility.

(5) A report by the Government Accountability Office entitled ''Nuclear Proliferation: DOE Action Needed to Ensure Continued Recovery of Unwanted Sealed Radioactive Sources'' states that ''[t]he small size and portability of the sealed sources make them susceptible to misuse, improper disposal, and theft. If these sealed sources fell into the hands of terrorists, they could be used as simple and crude but potentially dangerous radiological weapons, commonly called dirty bombs.''

(6) The Government Accountability Office report further states that ''[c]ertain sealed sources are considered particularly attractive for potential use in producing dirty bombs because, among other things, they contain more concentrated amounts of nuclear material known as 'greater-than-Class-C material.'''

(b) DEPARTMENT OF ENERGY RESPONSIBILITIES.—

(1) DESIGNATION OF RESPONSIBILITY.—The Secretary of Energy shall designate an entity within the Department of Energy to have the responsibility of completing activities needed to develop a facility for safely disposing of all greater-than-Class C low-level radioactive waste.

(2) CONSULTATION WITH CONGRESS.—In developing a plan for a permanent disposal facility for greater-than-Class C low-level radioactive waste (including preparation of an environmental impact statement and issuance of a record of decision), the Secretary of Energy shall consult with Congress.

(c) REPORTS.—

(1) UPDATE OF 1987 REPORT.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Energy shall submit to Congress an update of the comprehensive report making recommendations for ensuring the safe disposal of all greater-than-Class C low-level radioactive waste that was submitted by the Secretary to Congress in February 1987.

(B) CONTENTS.—The update shall contain—

(i) an identification of the radioactive waste that is to be disposed of (including the source of the waste and the volume, concentration, and other relevant characteristics of the waste);

(ii) an identification of the Federal and non-Federal options for disposal of the waste;

(iii) a description of the actions proposed to ensure the safe disposal of the waste;

(iv) an estimate of the costs of the proposed actions;

(v) an identification of the options for ensuring that the beneficiaries of the activities resulting in the generation of the radioactive waste bear all reasonable costs of disposing of the waste;

(vi) an identification of any statutory authority required for disposal of the waste; and

(vii) in coordination with the Environmental Protection Agency and the Nuclear Regulatory Commission, an identification of any regulatory guidance needed for the disposal of the waste.

(2) REPORT ON PERMANENT DISPOSAL FACILITY.—

(A) REPORT ON COST AND SCHEDULE FOR COMPLETION OF EIS AND ROD.—Not later than 180 days after the date of submission of the update under paragraph (1), the Secretary of Energy shall submit to Congress a report containing an estimate of the cost and schedule to complete an environmental impact statement and record of decision for a permanent disposal facility for greater-than-Class C radioactive waste.

(B) REPORT ON ALTERNATIVES.—Before the Secretary of Energy makes a final decision on the disposal alternative to be implemented, the Secretary of Energy shall—

(i) submit to Congress a report that describes all alternatives under consideration; and

(ii) await action by Congress.

(3) REPORT ON SHORT-TERM PLAN.—

(A) IN GENERAL.—Not later than December 31, 2005, the Secretary of Energy shall submit to Congress a plan to ensure the continued recovery and storage of greater-than-Class C low-level radioactive waste until a permanent disposal facility is available.

(B) CONTENTS.—The plan shall contain estimated cost, resource, and facility needs.

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**SA 3771.** Mr. BINGAMAN (for himself and Mr. DOMENICI) submitted an amendment intended to be proposed by him to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; which was ordered to lie on the table; as follows:

On page 91, between lines 12 and 13, insert the following:

(C) Employees of Federally Funded Research and Development Centers (as that term is defined in part 35 of the Federal Acquisition Regulation), including employees of the Department of Energy national laboratories who are associated with field intelligence elements of the Department of Energy, shall be eligible to serve under contract or other mechanism with the National Counterterrorism Center under this paragraph.

On page 98, between lines 21 and 22, insert the following:

(C) Employees of Federally Funded Research and Development Centers (as that term is defined in part 35 of the Federal Acquisition Regulation), including employees of the Department of Energy national laboratories who are associated with field intelligence elements of the Department of Energy, shall be eligible to serve under contract or other mechanism with a national intelligence center under this paragraph.

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**SA 3772.** Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; which was ordered to lie on the table; as follows:

On page 45, between lines 10 and 11, insert the following:

(11) The Chief Scientist of the National Intelligence Authority.

On page 45, line 11, strike ''(11)'' and insert ''(12)''.

On page 45, line 14, strike ''(12)'' and insert ''(13)''.

On page 59, between lines 14 and 15, insert the following:

**SEC. 131. CHIEF SCIENTIST OF THE NATIONAL INTELLIGENCE AUTHORITY.**

(a) CHIEF SCIENTIST OF NATIONAL INTELLIGENCE AUTHORITY.—There is a Chief Scientist of the National Intelligence Authority who shall be appointed by the National Intelligence Director.

(b) REQUIREMENT RELATING TO APPOINTMENT.—An individual appointed as Chief Scientist of the National Intelligence Authority shall have a professional background and experience appropriate for the duties of the Chief Scientist.

(c) DUTIES.—The Chief Scientist of the National Intelligence Authority shall—

(1) act as the chief representative of the National Intelligence Director for science and technology;

(2) chair the National Intelligence Authority Science and Technology Committee under subsection (d);

(3) assist the Director in formulating a long-term strategy for scientific advances in the field of intelligence;

(4) assist the Director on the science and technology elements of the budget of the National Intelligence Authority; and

(5) perform other such duties as may be prescribed by Director or by law.

(d) NATIONAL INTELLIGENCE AUTHORITY SCIENCE AND TECHNOLOGY COMMITTEE.—(1) There is within the Office of the Chief Scientist of the National Intelligence Authority a National Intelligence Authority Science and Technology Committee.

(2) The Committee shall be composed of composed of the principal science officers of the National Intelligence Program.

(3) The Committee shall—

(A) coordinate advances in research and development related to intelligence; and

(B) perform such other functions as the Chief Scientist of the National Intelligence Authority shall prescribe.

On page 59, line 15, strike ''**131.**'' and insert ''**132.**''.

On page 202, line 16, strike ''131(b)'' and insert ''132(b)''.

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**SA 3773.** Mr. BURNS proposed an amendment to amendment SA 3766 proposed by Mr. MCCAIN to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; as follows:

**TITLE —PUBLIC SAFETY SPECTRUM**

**SEC. —01. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This title may be cited as the ''Spectrum Availability for Emergency-Response and Law-Enforcement To Improve Vital Emergency Services Act'' or the ''SAVE LIVES Act''.

(b) TABLE OF CONTENTS.—The table of contents for this title is as follows:



**SEC. —02. FINDINGS.**

The Congress finds the following:

(1) In its final report, the 9-11 Commission advocated that Congress pass legislation providing for the expedited and increased assignment of radio spectrum for public safety purposes. The 9-11 Commission stated that this spectrum was necessary to improve communications between local, State and Federal public safety organizations and public safety organizations operating in neighboring jurisdictions that may respond to an emergency in unison.

(2) Specifically, the 9-11 Commission report stated ''The inability to communicate was a critical element at the World Trade Center, Pentagon and Somerset County, Pennsylvania, crash sites, where multiple agencies and multiple jurisdictions responded. The occurrence of this problem at three very different sites is strong evidence that compatible and adequate communications among public safety organizations at the local, State, and Federal levels remains an important problem.''.

(3) In the Balanced Budget Act of 1997, the Congress directed the FCC to allocate spectrum currently being used by television broadcasters to public safety agencies to use for emergency communications. This spectrum has specific characteristics that make it an outstanding choice for emergency communications because signals sent over these frequencies are able to penetrate walls and travel great distances, and can assist multiple jurisdictions in deploying interoperable communications systems.

(4) This spectrum will not be fully available to public safety agencies until the completion of the digital television transition. The need for this spectrum is greater than ever. The nation cannot risk further loss of life due to public safety agencies' first responders' inability to communicate effectively in the event of another terrorist act or other crisis, such as a hurricane, tornado, flood, or earthquake.

(5) In the Balanced Budget Act of 1997, Congress set a date of December 31, 2006, for the termination of the digital television transition. Under current law, however, the deadline will be extended if fewer than 85 percent of the television households in a market are able to continue receiving local television broadcast signals.

(6) Federal Communications Commission Chairman Michael K. Powell testified at a hearing before the Senate Commerce, Science, and Transportation Committee on September 8, 2004, that, absent government action, this extension may allow the digital television transition to continue for ''decades'' or ''multiples of decades''.

(7) The Nation's public safety and welfare cannot be put off for ''decades'' or ''multiples of decades''. The Federal government should ensure that this spectrum is available for use by public safety organizations by January 1, 2009.

(8) Any plan to end the digital television transition would be incomplete if it did not ensure that consumers would be able to continue to enjoy over-the-air broadcast television with minimal disruption. If broadcasters air only a digital signal, some consumers may be unable to view digital transmissions using their analog-only television set. Local broadcasters are truly an important part of our homeland security and often an important communications vehicle in the event of a national emergency. Therefore, consumers who rely on over-the-air television, particularly those of limited economic means, should be assisted.

(9) The New America Foundation has testified before Congress that the cost to assist these 17.4 million exclusively over-the-air households to continue to view television is less than $1 billion dollars for equipment, which equates to roughly 3 percent of the Federal revenue likely from the auction of the analog television spectrum.

(10) Specifically, the New America Foundation has estimated that the Federal Government's auction of this spectrum could yield $30-to-$40 billion in revenue to the Treasury. Chairman Powell stated at the September 8, 2004, hearing that ''estimates of the value of that spectrum run anywhere from $30 billion to $70 billion''.

(11) Additionally, there will be societal benefits with the return of the analog broadcast spectrum. Former FCC Chairman Reed F. Hundt, at an April 28, 2004, hearing before the Senate Commerce, Science, and Transportation Committee, testified that this spectrum ''should be the fit and proper home of wireless broadband''. Mr. Hundt continued, ''Quite literally, [with this spectrum] the more millions of people in rural America will be able to afford Big Broadband Internet access, the more hundreds of millions of people in the world will be able to afford joining the Internet community.''.

(12) Due to the benefits that would flow to the Nation's citizens from the Federal Government reclaiming this analog television spectrum—including the safety of our Nation's first responders and those protected by first responders, additional revenues to the Federal treasury, millions of new jobs in the telecommunications sector of the economy, and increased wireless broadband availability to our Nation's rural citizens—Congress finds it necessary to set January 1, 2009, as a firm date for the return of this analog television spectrum.

**SEC. 3. SETTING A SPECIFIC DATE FOR THE AVAILABILITY OF SPECTRUM FOR PUBLIC SAFETY ORGANIZATIONS AND CREATING A DEADLINE FOR THE TRANSITION TO DIGITAL TELEVISION.**

(a) IN GENERAL.—Section 309(j)(14) of the Communications Act of 1934 (47 U.S.C. 309(j)(14)) is amended—

(5) by adding at the end the following:

''(E) ACCELERATION OF DEADLINE FOR PUBLIC SAFETY USE.—

''(i) Notwithstanding subparagraph (A) and (B), the Commission shall take all action necessary to complete by December 31, 2007—

''(I) the return of television station licenses operating on channels between 764 and 776 megaHertz and between 794 and 806 megaHertz; and

''(II) assignment of the electromagnetic spectrum between 764 and 776 megahertz, and between 794 and 806 megahertz, for public safety services.

''(ii) Notwithstanding subparagraphs (A) and (B), the Commission shall have the authority to modify, reassign, or require the return of, the television station licenses assigned to frequencies between 758 and 764 megahertz, 776 and 782 megahertz, and 788 and 794 megahertz as necessary to permit operations by public safety services on frequencies between 764 and 776 megahertz and between 794 and 806 megahertz, after the date of enactment of the this section, but such modifications, reassignments, or returns may not take effect until after December 31, 2007.''.

(b) The FCC may waive the requirements of sections (i) and (ii) and such other rules as necessary:

(A) in the absence of a bona fide request from relevant first responders in the affected designated market area; and;

(B) to the extent necessary to avoid consumer disruption but only if all relevant public safety entities are able to use such frequencies free of interference by December 31, 2007, or are otherwise able to resolve interference issues with relevant broadcast licensee by mutual agreement.''

**SEC. —04. STUDIES OF COMMUNICATIONS CAPABILITIES AND NEEDS.**

(a) IN GENERAL.—The Commission, in consultation with the Secretary of Homeland Security, shall conduct a study to assess strategies that may be used to meet public safety communications needs, including—

(1) the short-term and long-term need for additional spectrum allocation for Federal, State, and local first responders, including an additional allocation of spectrum in the 700 megaHertz band;

(2) the need for a nationwide interoperable broadband mobile communications network;

(3) the ability of public safety entities to utilize wireless broadband applications; and

(4) the communications capabilities of first receivers such as hospitals and health care workers, and current efforts to promote communications coordination and training among the first responders and the first receivers.

(b) REALLOCATION STUDY.—The Commission shall conduct a study to assess the advisability of reallocating any amount of spectrum in the 700 megaHertz band for unlicensed broadband uses. In the study, the Commission shall consider all other possible users of this spectrum, including public safety.

(c) REPORT.—The Commission shall report the results of the studies, together with any recommendations it may have, to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce within 1 year after the date of enactment of this Act.

**SEC. —05. STATUTORY AUTHORITY FOR THE DEPARTMENT OF HOMELAND SECURITY'S "SAFECOM" PROGRAM.**

Section 302 of the Homeland Security Act of 2002 (6 U.S.C. 182) is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''The''; and

(2) by adding at the end the following:

''(b) SAFECOM AUTHORIZED.—

''(1) IN GENERAL.—In carrying out subsection (a), the Under Secretary shall establish a program to address the interoperability of communications devices used by Federal, State, tribal, and local first responders, to be known as the Wireless Public Safety Interoperability Communications Program, or 'SAFECOM'. The Under Secretary shall coordinate the program with the Director of the Department of Justice's Office of Science and Technology and all other Federal programs engaging in communications interoperability research, development, and funding activities to ensure that the program takes into account, and does not duplicate, those programs or activities.

''(2) COMPONENTS.—The program established under paragraph (1) shall be designed—

''(A) to provide research on the development of a communications system architecture that would ensure the interoperability of communications devices among Federal, State, tribal, and local officials that would enhance the potential for a coordinated response to a national emergency;

''(B) to support the completion and promote the adoption of mutually compatible voluntary consensus standards developed by a standards development organization accredited by the American National Standards Institute to ensure such interoperability; and

''(C) to provide for the development of a model strategic plan that could be used by any State or region in developing its communications interoperability plan.

''(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this subsection—

''(A) $22,105,000 for fiscal year 2005;

''(B) $22,768,000 for fiscal year 2006;

''(C) $23,451,000 for fiscal year 2007;

''(D) $24,155,000 for fiscal year 2008; and

''(E) $24,879,000 for fiscal year 2009.

''(c) NATIONAL BASELINE STUDY OF PUBLIC SAFETY COMMUNICATIONS INTEROPERABILITY.—By December 31, 2005, the Under Secretary of Homeland Security for Science and Technology shall complete a study to develop a national baseline for communications interoperability and develop common grant guidance for all Federal grant programs that provide communications-related resources or assistance to State and local agencies, any Federal programs conducting demonstration projects, providing technical assistance, providing outreach services, providing standards development assistance, or conducting research and development with the public safety community with respect to wireless communications. The Under Secretary shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce containing the Under Secretary's findings, conclusions, and recommendations from the study.''.

**SEC. —06. GRANT PROGRAM TO PROVIDE ENHANCED INTEROPERABILITY OF COMMUNICATIONS FOR FIRST RESPONDERS.**

(a) IN GENERAL.—The Secretary of Homeland Security shall establish a program to help State, local, tribal, and regional first responders acquire and deploy interoperable communications equipment, purchase such equipment, and train personnel in the use of such equipment. The Secretary, in cooperation with the heads of other Federal departments and agencies who administer programs that provide communications-related assistance programs to State, local, and tribal public safety organizations, shall develop and implement common standards to the greatest extent practicable.

(b) APPLICATIONS.—To be eligible for assistance under the program, a State, local, tribal, or regional first responder agency shall submit an application, at such time, in such form, and containing such information as the Under Secretary of Homeland Security for Science and Technology may require, including—

(1) a detailed explanation of how assistance received under the program would be used to improve local communications interoperability and ensure interoperability with other appropriate Federal, State, local, tribal, and regional agencies in a regional or national emergency;

(2) assurance that the equipment and system would—

(A) not be incompatible with the communications architecture developed under section 302(b)(2)(A) of the Homeland Security Act of 2002;

(B) would meet any voluntary consensus standards developed under section 302(b)(2)(B) of that Act; and

(C) be consistent with the common grant guidance established under section 302(b)(3) of the Homeland Security Act of 2002.

(c) GRANTS.—The Under Secretary shall review applications submitted under subsection (b). The Secretary, pursuant to an application approved by the Under Secretary, may make the assistance provided under the program available in the form of a single grant for a period of not more than 3 years.

**SEC. —07. DIGITAL TRANSITION PUBLIC SAFETY COMMUNICATIONS GRANT AND CONSUMER ASSISTANCE FUND.**

(a) IN GENERAL.—There is established on the books of the Treasury a separate fund to be known as the ''Digital Transition Consumer Assistance Fund'', which shall be administered by the Secretary, in consultation with the Assistant Secretary of Commerce for Communications and Information.

(b) CREDITING OF RECEIPTS.—The Fund shall be credited with the amount specified

in section 309(j)(8)(D) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(D)).

(c) FUND AVAILABILITY.—

(1) APPROPRIATIONS.—

(A) CONSUMER ASSISTANCE PROGRAM.—There are appropriated to the Secretary from the Fund such sums, not to exceed $1,000,000,000, as are required to carry out the program established under section 8 of this Act.

(B) PSO GRANT PROGRAM.—To the extent that amounts available in the Fund exceed the amount required to carry out that program, there are authorized to be appropriated to the Secretary of Homeland Security, such sums as are required to carry out the program established under section 6 of this Act, not to exceed an amount, determined by the Director of the Office of Management and Budget, on the basis of the findings of the National Baseline Interoperability study conducted by the SAFECOM Office of the Department of Homeland Security.

(2) REVERSION OF UNUSED FUNDS.—Any auction proceeds in the Fund that are remaining after the date on which the programs under section 6 and 8 of this Act terminate, as determined by the Secretary of Homeland Security and the Secretary of Commerce respectively, shall revert to and be deposited in the general fund of the Treasury.

(d) DEPOSIT OF AUCTION PROCEEDS.—Paragraph (8) of section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) is amended—

(1) by inserting ''or subparagraph (D)'' in subparagraph (A) after ''subparagraph (B)''; and

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

''(D) DISPOSITION OF CASH PROCEEDS FROM AUCTION OF CHANNELS 52 THROUGH 69.—Cash proceeds attributable to the auction of any eligible frequencies between 698 and 806 megaHertz on the electromagnetic spectrum conducted after the date of enactment of the SAVE LIVES Act shall be deposited in the Digital Transition Consumer Assistance Fund established under section 7 of that Act.''.

**SEC. —08. DIGITAL TRANSITION PROGRAM.**

(a) IN GENERAL.—The Secretary, in consultation with the Commission and the Director of the Office of Management and Budget, shall establish a program to assist households—

(1) in the purchase or other acquisition of digital-to-analog converter devices that will enable television sets that operate only with analog signal processing to continue to operate when receiving a digital signal;

(2) in the payment of a one-time installation fee (not in excess of the industry average fee for the date, locale, and structure involved, as determined by the Secretary) for installing the equipment required for residential reception of services provided by a multichannel video programming distributor (as defined in section 602(13) of the Communications Act of 1934 (47 U.S.C. 602(13)); or

(3) in the purchase of any other device that will enable the household to receive over-the-air digital television broadcast signals, but in an amount not in excess of the average per-household assistance provided under paragraphs (1) and (2).

(b) PROGRAM CRITERIA.—The Secretary shall ensure that the program established under subsection (a)—

(1) becomes publicly available no later than January 1, 2008;

(2) gives first priority to assisting lower income households (as determined by the Director of the Bureau of the Census for statistical reporting purposes) who rely exclusively on over-the-air television broadcasts;

(3) gives second priority to assisting other households who rely exclusively on over-the-air television broadcasts;

(4) is technologically neutral; and

(5) is conducted at the lowest feasible administrative cost.

**SEC. —09. FCC AUTHORITY TO REQUIRE LABEL REQUIREMENT FOR ANALOG TELEVISION SETS.**

(a) IN GENERAL.—Section 303 of the Communications Act of 1934 (47 U.S.C. 303) is amended by adding at the end the following:

''(z) If the Commission acts to set a hard deadline for the return of analog spectrum pursuant to Section 309(j)(14), it shall have the authority to require that any apparatus described in paragraph (s) sold or offered for sale in or affecting interstate commerce that is incapable of receiving and displaying a digital television broadcast signal without the use of an external device that translates digital television broadcast signals into analog television broadcast signals have affixed to it and, if it is sold or offered for sale in a container, affixed to that container, a label that states that the apparatus will be incapable of displaying over-the-air television broadcast signals received after a date determined by the FCC, without the purchase of additional equipment.''.

(c) POINT OF SALE WARNING.—If the Commission acts to set a hard deadline for the return of analog spectrum pursuant to Section 309 (j)(14), then the Commission, in consultation with the Federal Trade Commission, shall have the authority to require the display at, or in close proximity to, any commercial retail sales display of television sets described in section 303(z) of the Communications Act of 1934 (47 U.S.C. 303(z)) sold or offered for sale in or affecting interstate commerce after a date determined by the Commission, of a printed notice that clearly and conspicuously states that the sets will be incapable of displaying over-the-air television broadcast signals received after the hard deadline established by the Commission, without the purchase or lease of additional equipment.

**SEC. —10. REPORT ON CONSUMER EDUCATION PROGRAM REQUIREMENTS.**

Within 1 year after the date of enactment of this Act, the Assistant Secretary of Commerce for Communications and Information, after consultation with the Commission, shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce containing recommendations with respect to—

(1) an effective program to educate consumers about the transition to digital television broadcast signals and the impact of that transition on consumers' choices of equipment to receive such signals;

(2) the need, if any, for Federal funding for such a program;

(3) the date of commencement and duration of such a program; and

(4) what department or agency should have the lead responsibility for conducting such a program.

**SEC. —11. FCC TO ISSUE DECISION IN CERTAIN PROCEEDINGS.**

The Commission shall issue a final decision before—

(1) January 1, 2005, in the Matter of Carriage of Digital Television Broadcast Signals; Amendments to Part 76 of the Commission's Rules, CS Docket No. 98-120;

(2) January 1, 2005, in the Matter of Public Interest Obligations of TV Broadcast Licensees, MM Docket No. 99-360; and

(3) January 1, 2006, in the Implementation of the Satellite Home Viewer Improvement Act of 1999; Local Broadcast Signal Carriage Issues, CS Docket No. 00-96.

**SEC. —12. DEFINITIONS.**

In this title:

(1) COMMISSION.—The term ''Commission'' means the Federal Communications Commission.

(2) FUND.—The term ''Fund'' means the Digital Transition Consumer Assistance Fund established by section 7.

(3) SECRETARY.—Except where otherwise expressly provided, the term ''Secretary'' means the Secretary of Commerce.

**SEC. —13. EFFECTIVE DATE.**

This title takes effect on the date of enactment of this Act.

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**SA 3774.** Mr. MCCAIN (for himself and Mr. LIEBERMAN) proposed an amendment to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; as follows:

At the appropriate place, insert the following:

**TITLE—NATIONAL PREPAREDNESS**

**SEC. —01. THE INCIDENT COMMAND SYSTEM.**

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) The attacks on September 11, 2001, demonstrated that even the most robust emergency response capabilities can be overwhelmed if an attack is large enough.

(2) Teamwork, collaboration, and cooperation at an incident site are critical to a successful response to a terrorist attack.

(3) Key decision makers who are represented at the incident command level help to ensure an effective response, the efficient use of resources, and responder safety.

(4) Regular joint training at all levels is essential to ensuring close coordination during an actual incident.

(5) Beginning with fiscal year 2005, the Department of Homeland Security is requiring that entities adopt the Incident Command System and other concepts of the National Incident Management System in order to qualify for funds distributed by the Office of State and Local Government Coordination and Preparedness.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) emergency response agencies nationwide should adopt the Incident Command System;

(2) when multiple agencies or multiple jurisdictions are involved, they should follow a unified command system; and

(3) the Secretary of Homeland Security should require, as a further condition of receiving homeland security preparedness funds from the Office of State and Local Government Coordination and Preparedness, that grant applicants document measures taken to fully and aggressively implement the Incident Command System and unified command procedures.

**SEC. —02. NATIONAL CAPITAL REGION MUTUAL AID.**

(a) DEFINITIONS.—In this section:

(1) AUTHORIZED REPRESENTATIVE OF THE FEDERAL GOVERNMENT.—The term ''authorized representative of the Federal Government'' means any individual or individuals designated by the President with respect to the executive branch, the Chief Justice with respect to the Federal judiciary, or the President of the Senate and Speaker of the House of Representatives with respect to Congress, or their designees, to request assistance under a Mutual Aid Agreement for an emergency or public service event.

(2) CHIEF OPERATING OFFICER.—The term ''chief operating officer'' means the official designated by law to declare an emergency in and for the locality of that chief operating officer.

(3) EMERGENCY.—The term ''emergency'' means a major disaster or emergency declared by the President, or a state of emergency declared by the Mayor of the District of Columbia, the Governor of the State of Maryland or the Commonwealth of Virginia, or the declaration of a local emergency by the chief operating officer of a locality, or their designees, that triggers mutual aid under the terms of a Mutual Aid Agreement.

(4) EMPLOYEE.—The term ''employee'' means the employees of the party, including its agents or authorized volunteers, who are committed in a Mutual Aid Agreement to prepare for or who respond to an emergency or public service event.

(5) LOCALITY.—The term ''locality'' means a county, city, or town within the State of Maryland or the Commonwealth of Virginia and within the National Capital Region.

(6) MUTUAL AID AGREEMENT.—The term ''Mutual Aid Agreement'' means an agreement, authorized under subsection (b) for the provision of police, fire, rescue and other public safety and health or medical services to any party to the agreement during a public service event, an emergency, or preplanned training event.

(7) NATIONAL CAPITAL REGION OR REGION.—The term ''National Capital Region'' or ''Region'' means the area defined under section 2674(f)(2) of title 10, United States Code, and those counties with a border abutting that area and any municipalities therein.

(8) PARTY.—The term ''party'' means the State of Maryland, the Commonwealth of Virginia, the District of Columbia, and any of the localities duly executing a Mutual Aid Agreement under this section.

(9) PUBLIC SERVICE EVENT.—The term ''public service event''

(A) means any undeclared emergency, incident or situation in preparation for or response to which the Mayor of the District of Columbia, an authorized representative of the Federal Government, the Governor of the State of Maryland, the Governor of the Commonwealth of Virginia, or the chief operating officer of a locality in the National Capital Region, or their designees, requests or provides assistance under a Mutual Aid Agreement within the National Capital Region; and

(B) includes Presidential inaugurations, public gatherings, demonstrations and protests, and law enforcement, fire, rescue, emergency health and medical services, transportation, communications, public works and engineering, mass care, and other support that require human resources, equipment, facilities or services supplemental to or greater than the requesting jurisdiction can provide.

(10) STATE.—The term ''State'' means the State of Maryland, the Commonwealth of Virginia, and the District of Columbia.

(11) TRAINING.—The term ''training'' means emergency and public service event-related exercises, testing, or other activities using equipment and personnel to simulate performance of any aspect of the giving or receiving of aid by National Capital Region jurisdictions during emergencies or public service events, such actions occurring outside actual emergency or public service event periods.

(b) MUTUAL AID AUTHORIZED.—

(1) IN GENERAL.—The Mayor of the District of Columbia, any authorized representative of the Federal Government, the Governor of the State of Maryland, the Governor of the Commonwealth of Virginia, or the chief operating officer of a locality, or their designees, acting within his or her jurisdictional purview, may, subject to State law, enter into, request or provide assistance under Mutual Aid Agreements with localities, the Washington Metropolitan Area Transit Authority, the Metropolitan Washington Airports Authority, and any other governmental agency or authority for—

(A) law enforcement, fire, rescue, emergency health and medical services, transportation, communications, public works and engineering, mass care, and resource support in an emergency or public service event;

(B) preparing for, mitigating, managing, responding to or recovering from any emergency or public service event; and

(C) training for any of the activities described under subparagraphs (A) and (B).

(2) FACILITATING LOCALITIES.—The State of Maryland and the Commonwealth of Virginia are encouraged to facilitate the ability of localities to enter into interstate Mutual Aid Agreements in the National Capital Region under this section.

(3) APPLICATION AND EFFECT.—This section—

(A) does not apply to law enforcement security operations at special events of national significance under section 3056(e) of title 18, United States Code, or other law enforcement functions of the United States Secret Service;

(B) does not diminish any authorities, express or implied, of Federal agencies to enter into Mutual Aid Agreements in furtherance of their Federal missions; and

(C) does not—

(i) preclude any party from entering into supplementary Mutual Aid Agreements with fewer than all the parties, or with another party; or

(ii) affect any other agreement in effect before the date of enactment of this Act among the States and localities, including the Emergency Management Assistance Compact.

(4) RIGHTS DESCRIBED.—Other than as described in this section, the rights and responsibilities of the parties to a Mutual Aid Agreement entered into under this section shall be as described in the Mutual Aid Agreement.

(c) DISTRICT OF COLUMBIA.—

(1) IN GENERAL.—The District of Columbia may purchase liability and indemnification insurance or become self insured against claims arising under a Mutual Aid Agreement authorized under this section.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out paragraph (1).

(d) LIABILITY AND ACTIONS AT LAW.—

(1) IN GENERAL.—Any responding party or its officers or employees rendering aid or failing to render aid to the District of Columbia, the Federal Government, the State of Maryland, the Commonwealth of Virginia, or a locality, under a Mutual Aid Agreement authorized under this section, and any party or its officers or employees engaged in training activities with another party under such a Mutual Aid Agreement, shall be liable on account of any act or omission of its officers or employees while so engaged or on account of the maintenance or use of any related equipment, facilities, or supplies, but only to the extent permitted under the laws and procedures of the State of the party rendering aid.

(2) ACTIONS.—Any action brought against a party or its officers or employees on account of an act or omission in the rendering of aid to the District of Columbia, the Federal Government, the State of Maryland, the Commonwealth of Virginia, or a locality, or failure to render such aid or on account of the maintenance or use of any related equipment, facilities, or supplies may be brought only under the laws and procedures of the State of the party rendering aid and only in the Federal or State courts located therein. Actions against the United States under this section may be brought only in Federal courts.

(3) GOOD FAITH EXCEPTION.—

(A) DEFINITION.—In this paragraph, the term ''good faith'' shall not include willful misconduct, gross negligence, or recklessness.

(B) EXCEPTION.—No State or locality, or its officers or employees, rendering aid to another party, or engaging in training, under a Mutual Aid Agreement shall be liable under Federal law on account of any act or omission performed in good faith while so engaged, or on account of the maintenance or use of any related equipment, facilities, or supplies performed in good faith.

(4) IMMUNITIES.—This section shall not abrogate any other immunities from liability that any party has under any other Federal or State law.

(d) WORKERS COMPENSATION.—

(1) COMPENSATION.—Each party shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that party and representatives of deceased members of such forces if such members sustain injuries or are killed while rendering aid to the District of Columbia, the Federal Government, the State of Maryland, the Commonwealth of Virginia, or a locality, under a Mutual Aid Agreement, or engaged in training activities under a Mutual Aid Agreement, in the same manner and on the same terms as if the injury or death were sustained within their own jurisdiction.

(2) OTHER STATE LAW.—No party shall be liable under the law of any State other than its own for providing for the payment of compensation and death benefits to injured members of the emergency forces of that party and representatives of deceased members of such forces if such members sustain injuries or are killed while rendering aid to the District of Columbia, the Federal Government, the State of Maryland, the Commonwealth of Virginia, or a locality, under a Mutual Aid Agreement or engaged in training activities under a Mutual Aid Agreement.

(e) LICENSES AND PERMITS.—If any person holds a license, certificate, or other permit issued by any responding party evidencing the meeting of qualifications for pro fessional, mechanical, or other skills and assistance is requested by a receiving jurisdiction, such person will be deemed licensed, certified, or permitted by the receiving jurisdiction to render aid involving such skill to meet a public service event, emergency or training for any such events.

**SEC.—03. URBAN AREA COMMUNICATIONS CAPABILITIES.**

(a) IN GENERAL.—Title V of the Homeland Security Act of 2002 (6 U.S.C. 311 et seq.) is amended by adding at the end the following:

**''SEC. 510. HIGH RISK URBAN AREA COMMUNICATIONS CAPABILITIES.**

''The Secretary, in consultation with the Federal Communications Commission and the Secretary of Defense, and with appropriate governors, mayors, and other State and local government officials, shall encourage and support the establishment of consistent and effective communications capabilities in the event of an emergency in urban areas determined by the Secretary to be at consistently high levels of risk from terrorist attack. Such communications capabilities shall ensure the ability of all levels of government agencies, including military authorities, and of first responders, hospitals, and other organizations with emergency response capabilities to communicate

with each other in the event of an emergency. Additionally, the Secretary, in conjunction with the Secretary of Defense, shall develop plans to provide back-up and additional communications support in the event of an emergency.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 1(b) of that Act is amended by inserting after the item relating to section 509 the following:

''Sec. 510. High risk urban area communications capabilities.''

**SEC.—04. PRIVATE SECTOR PREPAREDNESS.**

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Private sector organizations own 85 percent of the Nation's critical infrastructure and employ the vast majority of the Nation's workers.

(2) Unless a terrorist attack targets a military or other secure government facility, the first people called upon to respond will likely be civilians.

(3) Despite the exemplary efforts of some private entities, the private sector remains largely unprepared for a terrorist attack, due in part to the lack of a widely accepted standard for private sector preparedness.

(4) Preparedness in the private sector and public sector for rescue, restart and recovery of operations should include—

(A) a plan for evacuation;

(B) adequate communications capabilities; and

(C) a plan for continuity of operations.

(5) The American National Standards Institute recommends a voluntary national preparedness standard for the private sector based on the existing American National Standard on Disaster/Emergency Management and Business Continuity Programs (NFPA 1600), with appropriate modifications. This standard would establish a common set of criteria and terminology for preparedness, disaster management, emergency management, and business continuity programs.

(6) The mandate of the Department of Homeland Security extends to working with the private sector, as well as government entities.

(b) PRIVATE SECTOR PREPAREDNESS PROGRAM.—

(1) IN GENERAL.—Title V of the Homeland Security Act of 2002 (6 U.S.C. 311 et seq.), as amended by section 805, is amended by adding at the end the following:

**''SEC. 511. PRIVATE SECTOR PREPAREDNESS PROGRAM.**

''The Secretary shall establish a program to promote private sector preparedness for terrorism and other emergencies, including promoting the adoption of a voluntary national preparedness standard such as the private sector preparedness standard developed by the American National Standards Institute and based on the National Fire Protection Association 1600 Standard on Disaster/Emergency Management and Business Continuity Programs.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 1(b) of that Act, as amended by section 805, is amended by inserting after the item relating to section 510 the following:

''Sec. 511. Private sector preparedness program.''.

(c) SENSE OF CONGRESS.—It is the sense of Congress that insurance and credit-rating industries should consider compliance with the voluntary national preparedness standard, the adoption of which is promoted by the Secretary of Homeland Security under section 511 of the Homeland Security Act of 2002, as added by subsection (b), in assessing insurability and credit worthiness.

**SEC. —05. CRITICAL INFRASTRUCTURE AND READINESS AS SESSMENTS.**

(a) FINDINGS.—Congress finds the following:

(1) Under section 201 of the Homeland Security Act of 2002 (6 U.S.C 121), the Department of Homeland Security, through the Under Secretary for Information Analysis and Infrastructure Protection, has the responsibility—

(A) to carry out comprehensive assessments of the vulnerabilities of the key resources and critical infrastructure of the United States, including the performance of risk assessments to determine the risks posed by particular types of terrorist attacks within the United States;

(B) to identify priorities for protective and supportive measures; and

(C) to develop a comprehensive national plan for securing the key resources and critical infrastructure of the United States.

(2) Under Homeland Security Presidential Directive 7, issued on December 17, 2003, the Secretary of Homeland Security was given 1 year to develop a comprehensive plan to identify, prioritize, and coordinate the protection of critical infrastructure and key resources.

(3) Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, the Secretary of Homeland Security should—

(A) identify those elements of the United States' transportation, energy, communications, financial, and other institutions that need to be protected;

(B) develop plans to protect that infrastructure; and

(C) exercise mechanisms to enhance preparedness.

(b) REPORTS ON RISK ASSESSMENT AND READINESS.—Not later than 180 days after the date of enactment of this Act and annually thereafter, the Secretary of Homeland Security shall submit a report to Congress on—

(1) the Department of Homeland Security's progress in completing vulnerability and risk assessments of the Nation's critical infrastructure;

(2) the adequacy of the Government's plans to protect such infrastructure; and

(3) the readiness of the Government to respond to threats against the United States.

**SEC. —06. REPORT ON NORTHERN COMMAND AND DEFENSE OF THE UNITED STATES HOMELAND.**

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) The Department of Defense has primary responsibility for the military defense of the United States.

(2) Prior to September 11, 2001, the North American Aerospace Defense Command (NORAD), which had responsibility for defending United States airspace, focused on threats coming from outside the borders of the United States.

(3) The United States Northern Command has been established to assume responsibility for the military defense of the United States, as well as to provide military support to civil authorities.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of Defense should regularly assess the adequacy of the plans and strategies of the United States Northern Command with a view to ensuring that the United States Northern Command is prepared to respond effectively to all threats within the United States, should it be called upon to do so by the President.

(c) ANNUAL REPORT.—

(1) REQUIREMENT FOR REPORT.—The Secretary of Defense shall submit to the Committee on Armed Servces of the Senate and the Committee on Armed Services of the House of Representatives an annual report describing the plans and strategies of the United States Northern Command to defend the United States against all threats within the United States, in the case that it is called upon to do so by the President.

(2) SUBMISSION OF REPORT.—The annual report required by paragraph (1) shall be submitted in conjunction with the submission of the President's budget request to Congress.

**SEC. —07. EFFECTIVE DATE.**

Notwithstanding section 341 or any other provision of this Act, this title takes effect on the date of the enactment of this Act.

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**SA 3775.** Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; which was ordered to lie on the table; as follows:

On page 4, strike lines 5 through 16 and insert the following:

(2) The term ''foreign intelligence'' means information gathered, and activities conducted, relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities.

(3) The term ''counterintelligence'' means—

(A) foreign intelligence gathered, and activities conducted, to protect against espionage, other intelligence activities, sabotage, or assassinations conducted by or on behalf of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities; and

(B) information gathered, and activities conducted, to prevent the interference by or disruption of foreign intelligence activities of the United States by foreign government or elements thereof, foreign organizations, or foreign persons, or international terrorists.

On page 6, line 12, strike ''counterintelligence or''.

On page 7, beginning on line 5, strike ''the Office of Intelligence of the Federal Bureau of Investigation'' and insert ''the Directorate of Intelligence of the Federal Bureau of Investigation''.

On page 8, between lines 6 and 7, insert the following:

(8) The term ''counterespionage'' means counterintelligence designed to detect, destroy, neutralize, exploit, or prevent espionage activities though identification, penetration, deception, and prosecution (in accordance with the criminal law) of individuals, groups, or organizations conducting, or suspected of conducting, espionage activities.

(9) The term ''intelligence operation'' means activities conducted to facilitate the gathering of foreign intelligence or the conduct of covert action (as that term is defined in section 503(e) of the National Security Act of 1947 (50 U.S.C. 413b(e)).

(10) The term ''collection and analysis requirements'' means any subject, whether general or specific, upon which there is a need for the collection of intelligence information or the production of intelligence.

(11) The term ''collection and analysis tasking'' means the assignment or direction of an individual or activity to perform in a specified way to achieve an intelligence objective or goal.

(12) The term ''certified intelligence officer'' means a professional employee of an

element of the intelligence community engaged in intelligence activities who meets standards and qualifications set by the National Intelligence Director.

On page 120, beginning on line 17, strike '', subject to the direction and control of the President,''.

On page 123, between lines 6 and 7, insert the following:

(e) DISCHARGE OF IMPROVEMENTS.—(1) The Director of the Federal Bureau of Investigation shall carry out subsections (b) through (d) through the Executive Assistant Director of the Federal Bureau of Investigation for Intelligence or such other official as the Director of the Federal Bureau of Investigation designates as the head of the Directorate of Intelligence of the Federal Bureau of Investigation.

(2) The Director of the Federal Bureau of Investigation shall carry out subsections (b) through (d) under the joint direction, supervision, and control of the Attorney General and the National Intelligence Director.

(3) The Director of the Federal Bureau of Investigation shall report to both the Attorney General and the National Intelligence Director regarding the activities of the Federal Bureau of Investigation under subsections (b) through (d).

On page 123, line 7, strike ''(e)'' and insert ''(f)''.

On page 123, line 17, strike ''(f)'' and insert ''(g)''.

On page 126, between lines 20 and 21, insert the following:

**SEC. 206. DIRECTORATE OF INTELLIGENCE OF THE FEDERAL BUREAU OF INVESTIGATION.**

(a) DIRECTORATE OF INTELLIGENCE OF FEDERAL BUREAU OF INVESTIGATION.—The element of the Federal Bureau of Investigation known as the Office of Intelligence as of the date of the enactment of this Act is hereby redesignated as the Directorate of Intelligence of the Federal Bureau of Investigation.

(b) HEAD OF DIRECTORATE.—The head of the Directorate of Intelligence shall be the Executive Assistant Director of the Federal Bureau of Investigation for Intelligence or such other official within the Federal Bureau of Investigation as the Director of the Federal Bureau of Investigation shall designate.

(c) RESPONSIBILITIES.—The Directorate of Intelligence shall be responsible for the following:

(1) The discharge by the Federal Bureau of Investigation of all national intelligence programs, projects, and activities of the Bureau.

(2) The discharge by the Bureau of the requirements in section 105B of the National Security Act of 1947 (50 U.S.C. 403–5b).

(3) The oversight of Bureau field intelligence operations.

(4) Human source development and management by the Bureau.

(5) Collection by the Bureau against nationally-determined intelligence requirements.

(6) Language services.

(7) Strategic analysis.

(8) Intelligence program and budget management.

(9) The intelligence workforce.

(10) Any other responsibilities specified by the Director of the Federal Bureau of Investigation or specified by law.

(d) STAFF.—The Directorate of Intelligence shall consist of such staff as the Director of the Federal Bureau of Investigation considers appropriate for the activities of the Directorate.

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**SA 3776.** Mr. BURNS (for himself and Mr. BUNNING) submitted an amendment intended to be proposed by him to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; which was ordered to lie on the table; as follows:

On page 213, after line 12, insert the following:

**TITLE IV—AVIATION SECURITY**

**SEC. 401. SHORT TITLE.**

This title may be cited as the ''Aviation Homeland Security Act of 2004''.

**SEC. 402. FEDERAL FLIGHT DECK OFFICERS.**

(a) WEAPONS CARRIAGE.—Not later than 90 days after the date of enactment of this Act, the Secretary of Homeland Security shall implement a program to allow pilots participating in the Federal flight deck officer program, established under section 44921 of title 49, United States Code, to transport their firearms on their persons.

(b) INTERNATIONAL AGREEMENTS TO ALLOW MAXIMUM DEPLOYMENT OF FEDERAL FLIGHT DECK OFFICERS.—The Secretary of State shall negotiate agreements with foreign governments to allow Federal flight deck officers to carry and possess firearms within the jurisdictions of such foreign governments for protection of international flights against hijackings or other terrorist acts. Any such agreement shall provide Federal flight deck officers the same rights and privileges accorded Federal air marshals by such foreign governments. The Secretary of Homeland Security may not refuse to train any eligible pilot operating in foreign air transportation as a Federal flight deck officer. The Secretary shall provide means for pilots previously refused training as a Federal flight deck officer to reapply for the program.

(c) CREDENTIALS.—Not later than 90 days after the date of enactment of this Act, the Secretary of Homeland Security shall issue to each Federal flight deck officer standard Federal law enforcement credentials that are similar to the credentials issued to other Federal law enforcement officers, including a distinctive metal badge.

(d) DETERMINATION OF INELIGIBILITY AND APPEAL.—If the Secretary of Homeland Security determines that a pilot is ineligible to be a Federal flight deck officer, the Secretary shall provide the pilot with the reason for the determination of ineligibility and an opportunity to appeal the determination.

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**SA 3777.** Ms. SNOWE (for herself, Mr. ROBERTS, Ms. MIKULSKI, and Mrs. FEINSTEIN) submitted an amendment to be proposed by her to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; which was ordered to lie on the table; as follows:

On page 60, line 20, strike ''the relationships among''.

On page 63, line 8, strike ''the relationships among''.

On page 64, line 5, strike ''and'' at the end.

On page 64, between lines 5 and 6, insert the following:

(4) to evaluate the compliance of the National Intelligence Authority and the National Intelligence Program with any applicable United States law or regulation, including any applicable regulation, policy, or procedure issued under section 206, or with any regulation, policy, or procedure of the Director governing the sharing or dissemination of, or access to, intelligence information or products; and

On page 64, line 6, strike ''(4)'' and insert ''(5)''.

On page 65, strike lines 11 through 16 and insert the following:

(2)(A) The Inspector General shall have access to any employee, or any employee of a contractor, of any element of the intelligence community whose testimony is needed for the performance of the duties of the Inspector General.

On page 66, beginning on line 1, strike ''or contractor of the National Intelligence Authority'' and insert '', or any employee of a contractor, of any element of the intelligence community''.

On page 66, line 4, strike ''Director'' and insert ''National Intelligence Director or other appropriate official of the intelligence community''.

On page 69, between lines 20 and 21, insert the following:

(C) Each Inspector General of an element of the intelligence community shall comply fully with a request for information or assistance from the Inspector General of the National Intelligence Authority.

(D) The Inspector General of the National Intelligence Authority may, upon reasonable notice to the head of any element of the intelligence community, conduct, as authorized by this section, an investigation, inspection, or audit of such element and may enter into any place occupied by such element for purposes the performance of the duties of the Inspector General.

On page 70, line 13, strike ''Authority'' and insert ''Program''.

On page 71, line 1, strike ''An assessment'' and insert ''In consultation with the Officer for Civil Rights and Civil Liberties of the National Intelligence Authority and the Privacy Officer of the National Intelligence Authority, an assessment''.

On page 71, beginning on line 16, strike ''Authority'' and insert ''Authority or the National Intelligence Program, or in the relationships between the elements of the intelligence community within the National Intelligence Program and the other elements of the intelligence community,''.

On page 72, beginning on line 3, strike ''a relationship between''.

On page 72, strike lines 19 through 25 and insert the following:

(B) an investigation, inspection, review, or audit carried out by the Inspector General focuses on any current or former official of the intelligence community who—

(i) holds or held a position in an element of the intelligence community that is subject to appointment by the President, by and with the advice and consent of the Senate, including an appointment held on an acting basis; or

(ii) holds or held a position in an element of the intelligence community, including a position held on an acting basis, that is appointed by the National Intelligence Director;

On page 73, strike line 24 and all that follows through page 74, line 5, and insert the following:

(5)(A) An employee of an element of the intelligence community, an employee assigned or detailed to an element of the intelligence community, or an employee of a contractor of an element of the intelligence community who intends to report to Congress a complaint or information with respect to an urgent concern may report such a complaint or information to the Inspector General.

On page 77, line 8, strike ''the Authority'' and insert ''an element of the intelligence community''.

On page 77, between lines 11 and 12, insert the following:

(i) CONSTRUCTION OF DUTIES REGARDING ELEMENTS OF INTELLIGENCE COMMUNITY.—The performance by the Inspector General of the National Intelligence Authority of any duty,

responsibility, or function regarding an element of the intelligence community shall not be construed to modify or effect the duties and responsibilities of any other Inspector General having duties or responsibilities relating to such element.

On page 77, line 12, strike ''(i)'' and insert ''(j)''.

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**SA 3778.** Mr. ALLARD submitted an amendment intended to be proposed by him to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; which was ordered to lie on the table; as follows:

On page 113, between lines 17 and 18, insert the following:

(b) TERMINATION OF EMPLOYEES.—(1) Notwithstanding any other provision of law, the National Intelligence Director may, in the discretion of the Director, terminate the employment of any officer or employee of the National Intelligence Authority whenever the Director considers the termination of employment of such officer or employee necessary or advisable in the interests of the United States.

(2) Any termination of employment of an officer or employee under paragraph (1) shall not affect the right of the officer or employee to seek or accept employment in any other department, agency, or element of the United States Government if declared eligible for such employment by the Office of Personnel Management.

On page 113, line 18, strike ''(b) RIGHTS AND PROTECTIONS'' and insert ''(c) OTHER RIGHTS AND PROTECTIONS''.

On page 113, after line 24, add the following:

(d) EXCLUSION FROM CERTAIN PERSONNEL MANAGEMENT REQUIREMENTS.—

(1) PERFORMANCE APPRAISALS.—Section 4301(1)(ii) of title 5, United States Code, is amended by inserting ''the National Intelligence Authority,'' before ''the Central Intelligence Agency,''.

(2) LABOR-MANAGEMENT RELATIONS.—Section 7103(a)(3) of that title is amended—

(A) in subparagraph (G), by striking ''or'' at the end;

(B) in subparagraph (H), by striking the period at the end and inserting a semicolon; and

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

''(I) the National Intelligence Authority;

''(J) the Defense Intelligence Agency;

''(K) the National Geospatial-Intelligence Agency; or

''(L) any other Executive agency or unit thereof which is designated by the President and the principal function of which is the conduct of foreign intelligence or counterintelligence activities.''.

(e) REGULATIONS.—(1) In carrying out the responsibilities and authorities specified in sections 112 and 113 and this section (including the amendments made by this section), the National Intelligence Director shall prescribe regulations regarding the management of personnel of the National Intelligence Authority.

(2) The regulations shall include provisions relating to the following:

(A) The applicability to the personnel of the Authority of the authorities referred to in subsection (a).

(B) The exercise of the authority under subsection (b) to terminate officers and employees of the Authority.

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**SA 3779.** Mr. DORGAN submitted an amendment intended to be proposed by him to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. ___. CONTAINER SECURITY TRIALS.**

(a) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary of Homeland Security in partnership with private industry and a land grant college with radio frequency identification (referred to in this section as ''RFID'') expertise shall conduct at least 2 large-scale cargo security trials, involving no fewer than 10,000 intermodal containers each, utilizing technologies such as radio frequency tracking or sensing technologies that provide seamless visibility throughout the entirety of the distribution chain from factory to retail.

(b) PROJECT FOCUS.—At least 1 project conducted under this section shall focus on United States-Sino trans-Pacific commerce with active RFID tag technology and 1 shall focus on the rural United States-Canadian border with battery assisted semi-passive sensor RFID tag technology.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

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**SA 3780.** Mr. ALLARD submitted an amendment intended to be proposed by him to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; which was ordered to lie on the table; as follows:

On page 153, between lines 1 and 2, insert the following:

**SEC. 207. MANAGEMENT OF CIVILIAN PERSONNEL CONDUCTING FOREIGN INTELLIGENCE AND COUNTERINTELLIGENCE ACTIVITIES.**

(a) IN GENERAL.—In carrying out the responsibilities and authorities specified in sections 112 and 113, the National Intelligence Director may terminate the employment of civilian personnel of the elements of the intelligence community whose principle function is the conduct of foreign intelligence or counterintelligence activities if the Director considers such action to be in the interests of the United States.

(b) FINALITY.—A decision of the National Intelligence Director to terminate the employment of an employee under this section is final and may not be appealed or reviewed outside such elements of the intelligence community as the President shall designate.

(c) PRESERVATION OF RIGHT TO SEEK OTHER EMPLOYMENT.—Any termination of employment of an employee under this section shall not affect the right of the employee to seek or accept employment with any other department, agency, or element of the United States Government if the employee is declared eligible for such employment by the Director of the Office of Personnel Management.

(d) DELEGATION OF AUTHORITY.—The National Intelligence Director may delegate the authority under subsection (a).

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**SA 3781.** Mr. WARNER (for himself and Mr. STEVENS) proposed an amendment to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; as follows:

On page 119, beginning on line 17, strike ''upon the request of the National Intelligence Director.'.'' and insert ''at least monthly and otherwise upon the request of the National Intelligence Director or another principal member of the Council.

''(e) ADVICE AND OPINIONS OF MEMBERS OTHER THAN CHAIRMAN.—(1) A member of the Joint Intelligence Community Council (other than the Chairman) may submit to the Chairman advice or an opinion in disagreement with, or advice or an opinion in addition to, the advice presented by the National Intelligence Director to the President or the National Security Council, in the role of the Chairman as Chairman of the Joint Intelligence Community Council. If a member submits such advice or opinion, the Chairman shall present the advice or opinion of such member at the same time the Chairman presents the advice of the Chairman to the President or the National Security Council, as the case may be.

''(2) The Chairman shall establish procedures to ensure that the presentation of the advice of the Chairman to the President or the National Security Council is not unduly delayed by reason of the submission of the individual advice or opinion of another member of the Council.

''(f) RECOMMENDATIONS TO CONGRESS.—Any member of the Joint Intelligence Community Council may make such recommendations to Congress relating to the intelligence community as such member considers appropriate.''.

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**SA 3782.** Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. ___. ALLOCATION OF FEDERAL HOMELAND SECURITY ASSISTANCE.**

Any Federal funds appropriated to the Department of Homeland Security for grants or other assistance shall be allocated based strictly on an assessment of risks and vulnerabilities.

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**SA 3783.** Mr. SESSIONS (for Mr. INOUYE) proposed an amendment to the bill S. 2436, to reauthorize the Native American Programs Act of 1974; as follows:

At the end, add the following:

**SEC. 2. RESEARCH AND EDUCATIONAL ACTIVITIES.**

Section 7205(a)(3) of the Native Hawaiian Education Act (20 U.S.C. 7515(a)(3)) is amended—

(1) by redesignating subparagraphs (K) and (L) as subparagraphs (L) and (M), respectively; and

(2) by inserting after subparagraph (J) the following:

''(K) research and educational activities relating to Native Hawaiian law;''.

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**SA 3784.** Mr. SESSIONS (for Mr. CRAIG) proposed an amendment to the bill S. 2639, to reauthorize the Congressional Award Act; as follows:

After section 1, insert the following:

**SEC. 2. FEDERAL FUNDS AND RESOURCES.**

(a) TECHNICAL AMENDMENTS; CLARIFICATION OF ACCEPTANCE OF FEDERAL FUNDS AND RESOURCES.—Section 106 of the Congressional Award Act (2 U.S.C. 806) is amended—

(1) in subsection (a)(1), by striking ''from sources other than the Federal Government'';

(2) in the heading of subsection (e), by striking ''NON-FEDERAL FUNDS AND RESOURCES; INDIRECT RESOURCES'' and inserting ''FUNDS AND RESOURCES'';

(3) in subsection (e)—

(A) in paragraph (1), by striking ''Subject to the provisions of paragraph (2), the'' and inserting ''The''; and

(B) by striking paragraph (2) and inserting the following:

''(2) The Board—

''(A) may benefit from in-kind and indirect resources provided by Offices of Members of Congress;

''(B) is not prohibited from receiving benefits from efforts or activities undertaken in collaboration with entities which receive Federal funds or resources; and

''(C) may not accept more than one-half of all funds accepted from Federal sources.''; and

(4) adding at the end the following:

''(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Board to carry out this Act $750,000 for each of fiscal years 2005, 2006, 2007, 2008, and 2009.''.

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**SA 3785.** Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. ___. HOAXES RELATING TO TERRORIST OFFENSES.**

(a) PROHIBITION ON HOAXES.—Chapter 47 of title 18, United States Code, is amended by inserting after section 1037 the following:

**''§ 1038. False information and hoaxes**

''(a) CRIMINAL VIOLATION.—

''(1) IN GENERAL.—Whoever engages in any conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed, and where such information indicates that an activity has taken, is taking, or will take place that would constitute an offense listed under section 2332b(g)(5)(B) of this title—

''(A) be fined under this title or imprisoned not more than 5 years, or both;

''(B) if serious bodily injury (as defined in section 1365 of this title, including any conduct that, if the conduct occurred in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242 of this title) results, be fined under this title or imprisoned not more than 25 years, or both; and

''(C) if death results, shall be punished by death or imprisoned for any term of years or for life.

''(2) ARMED FORCES.—Whoever, without lawful authority, makes a false statement, with intent to convey false or misleading information, about the death, injury, capture, or disappearance of a member of the Armed Forces of the United States during a war or armed conflict in which the United States is engaged, shall—

''(A) be fined under this title or imprisoned not more than 5 years, or both;

''(B) if serious bodily injury (as defined in section 1365 of this title, including any conduct that, if the conduct occurred in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242 of this title) results, be fined under this title or imprisoned not more than 25 years, or both; and

''(C) if death results, shall be punished by death or imprisoned for any term of years or for life.

''(b) CIVIL ACTION.—Whoever knowingly engages in any conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taking, or will take place that would constitute a violation of chapter 2, 10, 11B, 39, 40, 44, 111, or 113B of this title, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), or section 46502, the second sentence of section 46504, section 46505 (b)(3) or (c), section 46506 if homicide or attempted homicide is involved, or section 60123(b) of title 49 is liable in a civil action to any party incurring expenses incident to any emergency or investigative response to that conduct, for those expenses.

''(c) REIMBURSEMENT.—

''(1) IN GENERAL.—The court, in imposing a sentence on a defendant who has been convicted of an offense under subsection (a), shall order the defendant to reimburse any party incurring expenses incident to any emergency or investigative response to that conduct, for those expenses.

''(2) LIABILITY.—A person ordered to make reimbursement under this subsection shall be jointly and severally liable for such expenses with each other person, if any, who is ordered to make reimbursement under this subsection for the same expenses.

''(3) CIVIL JUDGMENT.—An order of reimbursement under this subsection shall, for the purposes of enforcement, be treated as a civil judgment.

''(d) ACTIVITIES OF LAW ENFORCEMENT.—This section shall not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or political subdivision of a State, or of an intelligence agency of the United States.''.

(b) CLERICAL AMENDMENT.—The table of sections of chapter 47 of title 18, United States Code, is amended by adding after the item relating to section 1037 the following:

''1038. False information and hoaxes.''.

**SEC. ___. INCREASED PENALTIES FOR OBSTRUCTION OF JUSTICE IN TERRORISM CASES.**

(a) ENHANCED PENALTY.—Sections 1001(a) and 1505 of title 18, United States Code, are amended by striking ''be fined under this title or imprisoned not more than 5 years, or both'' and inserting ''be fined under this title, imprisoned not more than 5 years or, if the matter relates to international or domestic terrorism (as defined in section 2331), imprisoned not more than 10 years, or both''.

(b) SENTENCING GUIDELINES.—Not later than 30 days after the date of enactment of this section, the United States Sentencing Commission shall amend the Sentencing Guidelines to provide for an increased offense level for an offense under sections 1001(a) and 1505 of title 18, United States Code, if the offense involves a matter relating to international or domestic terrorism, as defined in section 2331 of such title.

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**SA 3786.** Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. ___. ADDING TERRORIST OFFENSES TO STATUTORY PRESUMPTION OF NO BAIL.**

Section 3142 of title 18, United States Code, is amended—

(1) in the flush language at the end of subsection (e) by inserting before the period at the end the following: '', or an offense listed in section 2332b(g)(5)(B) of title 18 of the United States Code, if the Attorney General certifies that the offense appears by its nature or context to be intended to intimidate or coerce a civilian population, to influence the policy of a government by intimidation or coercion, or to affect the conduct of a government by mass destruction, assassination, or kidnaping, or an offense involved in or related to domestic or international terrorism as defined in section 2331 of title 18 of the United States Code''; and

(2) in subsections (f)(1)(A) and (g)(1), by inserting after ''violence'' the following: ''or an offense listed in section 2332b(g)(5)(B) of title 18 of the United States Code, if the Attorney General certifies that the offense appears by its nature or context to be intended to intimidate or coerce a civilian population, to influence the policy of a government by intimidation or coercion, or to affect the conduct of a government by mass destruction, assassination, or kidnaping, or an offense involved in or related to domestic or international terrorism as defined in section 2331 of title 18 of the United States Code,''.

**SEC. ___. MAKING TERRORISTS ELIGIBLE FOR LIFETIME POST-RELEASE SUPERVISION.**

Section 3583(j) of title 18, United States Code, is amended by striking '', the commission'' and all that follows through ''person,''.

**SEC. ___. AUTOMATIC PERMISSION FOR EX PARTE REQUESTS FOR PROTECTION UNDER THE CLASSIFIED INFORMATION PROCEDURES ACT.**

The second sentence of section 4 of the Classified Information Procedures Act (18 U.S.C. App. 3) is amended—

(1) by striking ''may'' and inserting ''shall''; and

(2) by striking ''a written statement to be inspected'' and inserting ''a statement to be considered''.

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**SA 3787.** Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. ___. UNIFORM STANDARDS FOR INFORMATION SHARING ACROSS FEDERAL AGENCIES.**

(a) TELEPHONE RECORDS.—Section 2709(d) of title 18, United States Code, is amended by striking ''for foreign'' and all that follows through ''such agency''.

(b) CONSUMER INFORMATION UNDER 15 U.S.C. 1681u.—Section 625(f) of the Fair Credit Reporting Act (15 U.S.C. 1681u(f)) is amended to read as follows:

''(f) DISSEMINATION OF INFORMATION.—The Federal Bureau of Investigation may disseminate information obtained pursuant to this section only as provided in guidelines approved by the Attorney General.''.

(c) CONSUMER INFORMATION UNDER 15 U.S.C. 1681v.—Section 626 of the Fair Credit Reporting Act (15 U.S.C. 1681v) is amended—

(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(2) by inserting after subsection (c) the following:

''(d) DISSEMINATION OF INFORMATION.—The Federal Bureau of Investigation may disseminate information obtained pursuant to

this section only as provided in guidelines approved by the Attorney General.''.

(d) FINANCIAL RECORDS.—Section 1114(a)(5)(B) of the Right to Financial Privacy Act (12 U.S.C. 3414(a)(5)(B)) is amended by striking ''for foreign'' and all that follows through ''such agency''.

(e) RECORDS CONCERNING CERTAIN GOVERNMENT EMPLOYEES.—Section 802(e) of the National Security Act of 1947 (50 U.S.C. 436(e)) is amended—

(1) by striking ''An agency'' and inserting the following: ''The Federal Bureau of Investigation may disseminate records or information received pursuant to a request under this section only as provided in guidelines approved by the Attorney General. Any other agency''; and

(2) in paragraph (3), by striking ''clearly''.

**SEC. ___. AUTHORIZATION TO SHARE NATIONAL-SECURITY AND GRAND-JURY INFORMATION WITH STATE AND LOCAL GOVERNMENTS.**

(a) INFORMATION OBTAINED IN NATIONAL SECURITY INVESTIGATIONS.—Section 203(d) of the USA PATRIOT ACT (50 U.S.C. 403–5d) is amended—

(1) in paragraph (1), by striking ''criminal investigation'' each place it appears and inserting ''criminal or national security investigation''; and

(2) by amending paragraph (2) to read as follows:

''(2) DEFINITIONS.—As used in this subsection—

''(A) the term 'foreign intelligence information' means—

''(i) information, whether or not concerning a United States person, that relates to the ability of the United States to protect against—

''(I) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

''(II) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

''(III) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or

''(ii) information, whether or not concerning a United States person, with respect to a foreign power or foreign territory that relates to—

''(I) the national defense or the security of the United States; or

''(II) the conduct of the foreign affairs of the United States; and

''(B) the term 'national security investigation'—

''(i) means any investigative activity to protect the national security; and

''(ii) includes—

''(I) counterintelligence and the collection of intelligence (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)); and

''(II) the collection of foreign intelligence information.''.

(b) RULE AMENDMENTS.—Rule 6(e) of the Federal Rules of Criminal Procedure is amended—

(1) in paragraph (3)—

(A) in subparagraph (A)(ii), by striking ''or state subdivision or of an Indian tribe'' and inserting '', state subdivision, Indian tribe, or foreign government'';

(B) in subparagraph (D)—

(i) by inserting after the first sentence the following: ''An attorney for the government may also disclose any grand-jury matter involving a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, to any appropriate Federal, State, state subdivision, Indian tribal, or foreign government official for the purpose of preventing or responding to such a threat.''; and

(ii) in clause (i)—

(I) by striking ''federal''; and

(II) by adding at the end the following: ''Any State, state subdivision, Indian tribal, or foreign government official who receives information under Rule 6(e)(3)(D) may use the information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.''; and

(C) in subparagraph (E)—

(i) by redesignating clauses (iii) and (iv) as clauses (iv) and (v), respectively;

(ii) by inserting after clause (ii) the following:

''(iii) at the request of the government, when sought by a foreign court or prosecutor for use in an official criminal investigation;''; and

(iii) in clause (iv), as redesignated—

(I) by striking ''state or Indian tribal'' and inserting ''State, Indian tribal, or foreign''; and

(II) by striking ''or Indian tribal official'' and inserting ''Indian tribal, or foreign government official''; and

(2) in paragraph (7), by inserting '', or of guidelines jointly issued by the Attorney General and Director of Central Intelligence pursuant to Rule 6,'' after ''Rule 6''.

(c) CONFORMING AMENDMENT.—Section 203(c) of the USA PATRIOT ACT (18 U.S.C. 2517 note) is amended by striking ''Rule 6(e)(3)(C)(i)(V) and (VI)'' and inserting ''Rule 6(e)(3)(D)''.

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**SA 3788.** Mr. KYL submitted and amendment intended to be proposed by him to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. ___. FISA WARRANTS FOR LONE-WOLF TERRORISTS.**

Section 101(b)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(b)(1)) is amended by adding at the end the following:

''(C) engages in international terrorism or activities in preparation therefore; or''.

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**SA 3789.** Mr. KYL submitted and amendment intended to be proposed by him to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. ___. USE OF FISA INFORMATION IN IMMIGRATION PROCEEDINGS.**

The following provisions of the Foreign Intelligence Surveillance Act of 1978 are each amended by inserting ''(other than in proceedings or other civil matters under the immigration laws (as that term is defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17)))'' after ''authority of the United States'':

(1) Subsections (c), (e), and (f) of section 106 (50 U.S.C. 1806).

(2) Subsections (d), (f), and (g) of section 305 (50 U.S.C. 1825).

(3) Subsections (c), (e), and (f) of section 405 (50 U.S.C. 1845).

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**SA 3790.** Mr. KYL submitted and amendment intended to be proposed by him to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. ___. EXPANDED DEATH PENALTY FOR TERRORIST MURDERS.**

(a) IN GENERAL.—Chapter 113B of title 18, United States Code, is amended by adding at the end the following:

**''§ 2339D. Terrorist offenses resulting in death**

''(a) PENALTY.—A person who, in the course of committing a terrorist offense, engages in conduct that results in the death of a person, shall be punished by death, or imprisoned for any term of years or for life.

''(b) TERRORIST OFFENSE DEFINED.—In this section, the term 'terrorist offense' means—

''(1) international or domestic terrorism as defined in section 2331;

''(2) a Federal crime of terrorism as defined in section 2332b(g);

''(3) an offense under—

''(A) this chapter;

''(B) section 175, 175b, 229, or 831; or

''(C) section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284); or

''(4) an attempt or conspiracy to commit an offense described in paragraph (1), (2), or (3).''.

(b) CHAPTER ANALYSIS.—The table of sections of chapter 113B of title 18, United States Code, is amended by inserting at the end the following:

''2339D. Terrorist offenses resulting in death.''.

(c) AGGRAVATING FACTORS.—

(1) IN GENERAL.—Section 3591(a)(1) of title 18, United States Code, is amended by striking ''or section 2381'' and inserting '', 2339D, or 2381''.

(2) CONFORMING AMENDMENT.—Section 3592(b) of title 18, United States Code, is amended—

(A) in the section heading, by striking ''AND TREASON'' and inserting '', TREASON, AND TERRORISM''; and

(B) in paragraph (1)—

(i) in the section heading, by striking ''OR TREASON'' and inserting '', TREASON, OR TERRORISM''; and

(ii) by striking ''or treason'' and inserting '', treason, or terrorism''.

(d) DEATH PENALTY IN CERTAIN AIR PIRACY CASES.—Section 60003(b) of the Violent Crime Control and Law Enforcement Act of 1994, (Public Law 103–322), is amended, as of the time of its enactment, by adding at the end the following:

''(2) DEATH PENALTY PROCEDURES FOR CERTAIN PREVIOUS AIRCRAFT PIRACY VIOLATIONS.—An individual convicted of violating section 46502 of title 49, United States Code, or its predecessor, may be sentenced to death in accordance with the procedures established in chapter 228 of title 18, United States Code, if for any offense committed before the enactment of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322), but after the enactment of the Antihijacking Act of 1974 (Public Law 93–366), it is determined by the finder of fact, before consideration of the factors set forth in sections 3591(a)(2) and 3592(a) and (c) of title 18, United States Code, that one or more of the factors set forth in former section 46503(c)(2) of title 49, United States

Code, or its predecessor, has been proven by the Government to exist, beyond a reasonable doubt, and that none of the factors set forth in former section 46503(c)(1) of title 49, United States Code, or its predecessor, has been proven by the defendant to exist, by a preponderance of the information. The meaning of the term 'especially heinous, cruel, or depraved', as used in the factor set forth in former section 46503(c)(2)(B)(iv) of title 49, United States Code, or its predecessor, shall be narrowed by adding the limiting language 'in that it involved torture or serious physical abuse to the victim', and shall be construed as when that term is used in section 3592(c)(6) of title 18, United States Code.''.

**SEC. ___. DENIAL OF FEDERAL BENEFITS TO CONVICTED TERRORISTS.**

(a) IN GENERAL.—Chapter 113B of title 18, United States Code, as amended by this Act, is further amended by adding at the end the following:

**''§ 2339E. Denial of Federal benefits to terrorists**

''(a) IN GENERAL.—Any individual who is convicted of a Federal crime of terrorism (as defined in section 2332b(g)) shall, as provided by the court on motion of the Government, be ineligible for any or all Federal benefits for any term of years or for life.

''(b) FEDERAL BENEFIT DEFINED.—As used in this section, 'Federal benefit' has the meaning given that term in section 421(d) of the Controlled Substances Act (21 U.S.C. 862(d)).''.

(b) CHAPTER ANALYSIS.—The table of sections of chapter 113B of title 18, United States Code, is amended by inserting at the end the following:

''2339E. Denial of Federal benefits to terrorists.''.

**SEC. ___. PROVIDING MATERIAL SUPPORT TO TERRORISM.**

(a) IN GENERAL.—Section 2339A(a) of title 18, United States Code, is amended—

(1) by striking ''Whoever'' and inserting the following:

''(1) IN GENERAL.—Any person who'';

(2) by striking ''A violation'' and inserting the following:

''(3) PROSECUTION.—A violation'';

(3) by inserting after paragraph (1) the following:

''(2) ADDITIONAL OFFENSE.—

''(A) IN GENERAL.—Any person who provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, an act of international or domestic terrorism, or in the preparation for, or in carrying out, the concealment or escape from the commission of any such act, or attempts or conspires to do so, shall be punished as provided under paragraph (1) for an offense under that paragraph.

''(B) JURISDICTION.—There is Federal jurisdiction over an offense under this paragraph if—

''(i) the offense occurs in or affects interstate or foreign commerce;

''(ii) the act of terrorism is an act of international or domestic terrorism that violates the criminal law of the United States;

''(iii) the act of terrorism is an act of domestic terrorism that appears to be intended to influence the policy, or affect the conduct, of the Government of the United States or a foreign government;

''(iv) the act of terrorism is an act of international terrorism that appears to be intended to influence the policy, or affect the conduct, of the Government of the United States or a foreign government, and an offender, acting within the United States or outside the territorial jurisdiction of the United States, is—

''(I) a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

''(II) an alien lawfully admitted for permanent residence in the United States (as defined in section 101(a)(20) of such Act); or

''(III) a stateless person whose habitual residence is in the United States;

''(v) the act of terrorism is an act of international terrorism that appears to be intended to influence the policy, or affect the conduct, of the Government of the United States or a foreign government, and an offender, acting within the United States, is an alien;

''(vi) the act of terrorism is an act of international terrorism that appears to be intended to influence the policy, or affect the conduct, of the Government of the United States, and an offender, acting outside the territorial jurisdiction of the United States, is an alien; or

''(vii) an offender aids or abets any person over whom jurisdiction exists under this paragraph in committing an offense under this paragraph or conspires with any person over whom jurisdiction exists under this paragraph to commit an offense under this paragraph.''; and

(4) by inserting ''act or'' after ''underlying''.

(b) DEFINITIONS.—Section 2339A(b) of title 18, United States Code, is amended to read as follows—

''(b) DEFINITIONS.—As used in this section—

''(1) the term 'material support or resources' means any property (tangible or intangible) or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials;

''(2) the term 'training' means instruction or teaching designed to impart a specific skill, rather than general knowledge; and

''(3) the term 'expert advice or assistance' means advice or assistance derived from scientific, technical, or other specialized knowledge.''.

(c) MATERIAL SUPPORT TO FOREIGN TERRORIST ORGANIZATION.—Section 2339B(a)(1) of title 18, United States Code, is amended—

(1) by striking ''Whoever, within the United States or subject to the jurisdiction of the United States,'' and inserting the following:

''(A) IN GENERAL.—Any person who''; and

(2) by adding at the end the following:

''(B) KNOWLEDGE REQUIREMENT.—A person cannot violate this paragraph unless the person has knowledge that the organization referred to in subparagraph (A)—

''(i) is a terrorist organization;

''(ii) has engaged or engages in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)); or

''(iii) has engaged or engages in terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f(d)(2)).''.

(d) JURISDICTION.—Section 2339B(d) of title 18, United States Code, is amended to read as follows:

''(d) JURISDICTION.—

''(1) IN GENERAL.—There is jurisdiction over an offense under subsection (a) if—

''(A) an offender is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)) or an alien lawfully admitted for permanent residence in the United States (as defined in section 101(a)(20) of such Act);

''(B) an offender is a stateless person whose habitual residence is in the United States;

''(C) an offender is brought in or found in the United States after the conduct required for the offense occurs, even if such conduct occurs outside the United States;

''(D) the offense occurs in whole or in part within the United States;

''(E) the offense occurs in or affects interstate or foreign commerce; or

''(F) an offender aids or abets any person, over whom jurisdiction exists under this paragraph, in committing an offense under subsection (a) or conspires with any person, over whom jurisdiction exists under this paragraph, to commit an offense under subsection (a).

''(2) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction over an offense under this section.''.

(e) PROVISION OF PERSONNEL.—Section 2339B of title 18, United States Code, is amended—

(1) by redesignating subsection (g) as subsection (h); and

(2) by adding after subsection (f) the following:

''(g) PROVISION OF PERSONNEL.—No person may be prosecuted under this section in connection with the term 'personnel' unless that person has knowingly provided, attempted to provide, or conspired to provide a foreign terrorist organization with 1 or more individuals (who may be or include that person) to work under that terrorist organization's direction or control or to organize, manage, supervise, or otherwise direct the operation of that organization. Any person who acts entirely independently of the foreign terrorist organization to advance its goals or objectives shall not be considered to be working under the foreign terrorist organization's direction or control.''.

**SEC. ___. RECEIVING MILITARY TYPE TRAINING FROM A FOREIGN TERRORIST ORGANIZATION.**

(a) PROHIBITION AS TO CITIZENS AND RESIDENTS.—

(1) IN GENERAL.—Chapter 113B of title 18, United States Code, is amended by adding after section 2339E the following:

**''§ 2339F. Receiving military-type training from a foreign terrorist organization**

''(a) OFFENSE.—

''(1) IN GENERAL.—Whoever knowingly receives military-type training from or on behalf of any organization designated at the time of the training by the Secretary of State under section 219(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1189(a)(1)) as a foreign terrorist organization, shall be fined under this title, imprisoned for ten years, or both.

''(2) KNOWLEDGE REQUIREMENT.—To violate paragraph (1), a person must have knowledge that the organization is a designated terrorist organization (as defined in subsection (c)(4)), that the organization has engaged or engages in terrorist activity (as defined in section 212 of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)), or that the organization has engaged or engages in terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f(d)(2)).

''(b) JURISDICTION.—

''(1) IN GENERAL.—There is jurisdiction over an offense under subsection (a) if—

''(A) an offender is a national of the United States (as defined in 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)), or an alien lawfully admitted for permanent residence in the United States (as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20));

''(B) an offender is a stateless person whose habitual residence is in the United States;

''(C) after the conduct required for the offense occurs an offender is brought into or found in the United States, even if the conduct required for the offense occurs outside the United States;

''(D) the offense occurs in whole or in part within the United States;

''(E) the offense occurs in or affects interstate or foreign commerce; and

''(F) an offender aids or abets any person over whom jurisdiction exists under this paragraph in committing an offense under subsection (a), or conspires with any person over whom jurisdiction exists under this paragraph to commit an offense under subsection (a).

''(2) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction over an offense under this section.

''(c) DEFINITIONS.—In this section:

''(1) MILITARY-TYPE TRAINING.—The term 'military-type training' means training in means or methods that can cause death or serious bodily injury, destroy or damage property, or disrupt services to critical infrastructure, or training on the use, storage, production, or assembly of any explosive, firearm or other weapon, including any weapon of mass destruction (as defined in section 2232a(c)(2)).

''(2) SERIOUS BODILY INJURY.—The term 'serious bodily injury' has the meaning given that term in section 1365(h)(3).

''(3) CRITICAL INFRASTRUCTURE.—The term 'critical infrastructure' means systems and assets vital to national defense, national security, economic security, public health, or safety, including both regional and national infrastructure. Critical infrastructure may be publicly or privately owned. Examples of critical infrastructure include gas and oil production, storage, or delivery systems, water supply systems, telecommunications networks, electrical power generation or delivery systems, financing and banking systems, emergency services (including medical, police, fire, and rescue services), and transportation systems and services (including highways, mass transit, airlines, and airports).

''(4) FOREIGN TERRORIST ORGANIZATION.—The term 'foreign terrorist organization' means an organization designated as a terrorist organization under section 219 (a)(1) of the Immigration and Nationality Act (8 U.S.C. 1189(a)(1)).''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 113B of title 18, United States Code, is amended by adding at the end the following:

''2339F. Receiving military-type training from a foreign terrorist organization.''.

(b) INADMISSIBILITY OF ALIENS WHO HAVE RECEIVED MILITARY-TYPE TRAINING FROM TERRORIST ORGANIZATIONS.—Section 212(a)(3)(B)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)) is amended—

(1) by striking ''is inadmissable. An alien who is an officer, official, representative, or spokesman of the Palestine Liberation Organization is considered, for purposes of this chapter, to be engaged in a terrorist activity.''; and

(2) by inserting after subclause (VII) the following:

''(VIII) has received military-type training (as defined in section 2339D(c)(1) of title 18, United States Code) from or on behalf of any organization that, at the time the training was received, was a terrorist organization under section 212(a)(3)(B)(vi),

is inadmissible. An alien who is an officer, official, representative, or spokesman of the Palestine Liberation Organization is considered, for purposes of this chapter, to be engaged in a terrorist activity.''.

(c) INADMISSIBILITY OF REPRESENTATIVES AND MEMBERS OF TERRORIST ORGANIZATIONS.—Section 212(a)(3)(B)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)) is amended—

(1) in subclause (IV), by striking item (aa) and inserting the following:

''(aa) a terrorist organization as defined under section 212(a)(3)(B)(vi), or''; and

(2) by striking subclause (V) and inserting the following:

''(V) is a member of—

''(aa) a terrorist organization as defined under section 212(a)(3)(B)(vi); or

''(bb) an organization which the alien knows or should have known is a terrorist organization,''.

(d) DEPORTATION OF ALIENS WHO HAVE RECEIVED MILITARY-TYPE TRAINING FROM TERRORIST ORGANIZATIONS.—Section 237(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)) is amended by adding at the end the following:

''(E) RECIPIENT OF MILITARY-TYPE TRAINING.—Any alien who has received military-type training (as defined in section 2339D(c)(1) of title 18, United States Code) from or on behalf of any organization that, at the time the training was received, was a terrorist organization under section 212(a)(3)(B)(vi), is deportable.''.

(e) RETROACTIVE APPLICATION.—The amendments made by subsections (b), (c), and (d) shall apply to the receipt of military training occuring before, on, or after the date of enactment of this Act.

**Subtitle ____—Combating Money Laundering and Terrorist Financing Act**

**SEC. ___01. SHORT TITLE.**

This subtitle may be cited as the ''Combating Money Laundering and Terrorist Financing Act of 2004''.

**SEC. ___02. SPECIFIED ACTIVITIES FOR MONEY LAUNDERING.**

(a) RICO DEFINITIONS.—Section 1961(1) of title 18, United States Code, is amended—

(1) in subparagraph (A), by inserting ''burglary, embezzlement,'' after ''robbery,'';

(2) in subparagraph (B), by—

(A) inserting ''section 1960 (relating to illegal money transmitters),'' before ''sections 2251'';

(B) striking ''1591'' and inserting ''1592'';

(C) inserting ''and 1470'' after ''1461–1465''; and

(D) inserting ''2252A,'' after ''2252,'';

(3) in subparagraph (D), by striking ''fraud in the sale of securities'' and inserting ''fraud in the purchase or sale of securities''; and

(4) in subparagraph (F), by inserting ''and 274A'' after ''274''.

(b) MONETARY INVESTMENTS.—Section 1956(c)(7)(D) of title 18, United States Code, is amended by—

(1) inserting '', or section 2339C (relating to financing of terrorism)'' before ''of this title''; and

(2) striking ''or any felony violation of the Foreign Corrupt Practices Act'' and inserting ''any felony violation of the Foreign Corrupt Practices Act, or any violation of section 208 of the Social Security Act (42 U.S.C. 408) (relating to obtaining funds through misuse of a social security number)''.

(c) CONFORMING AMENDMENTS.—

(1) MONETARY INSTRUMENTS.—Section 1956(e) of title 18, United States Code, is amended to read as follows:

''(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate, and, with respect to offenses over which the Department of Homeland Security has jurisdiction, by such components of the Department of Homeland Security as the Secretary of Homeland Security may direct, with respect to the offenses over which the Social Security Administration has jurisdiction, as the Commissioner of Social Security may direct, and with respect to offenses over which the United States Postal Service has jurisdiction, as the Postmaster General may direct. The authority under this subsection of the Secretary of the Treasury, the Secretary of Homeland Security, the Commissioner of Social Security, and the Postmaster General shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Secretary of Homeland Security, the Commissioner of Social Security, the Postmaster General, and the Attorney General. Violations of this section involving offenses described in subsection (c)(7)(E) may be investigated by such components of the Department of Justice as the Attorney General may direct, and the National Enforcement Investigations Center of the Environmental Protection Agency.''.

(2) PROPERTY FROM UNLAWFUL ACTIVITY.—Section 1957(e) of title 18, United States Code, is amended to read as follows:

''(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate, and, with respect to offenses over which the Department of Homeland Security has jurisdiction, by such components of the Department of Homeland Security as the Secretary of Homeland Security may direct, and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postmaster General. The authority under this subsection of the Secretary of the Treasury, the Secretary of Homeland Security, and the Postmaster General shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Secretary of Homeland Security, the Postmaster General, and the Attorney General.''.

**SEC. ___03. ILLEGAL MONEY TRANSMITTING BUSINESSES.**

(a) TECHNICAL AMENDMENTS.—Section 1960 of title 18, United States Code, is amended—

(1) in the caption by striking ''unlicensed'' and inserting ''illegal'';

(2) in subsection (a), by striking ''unlicensed'' and inserting ''illegal'';

(3) in subsection (b)(1), by striking ''unlicensed'' and inserting ''illegal''; and

(4) in subsection (b)(1)(C), by striking ''to be used to be used'' and inserting ''to be used''.

(b) PROHIBITION OF UNLICENSED MONEY TRANSMITTING BUSINESSES.—Section 1960(b)(1)(B) of title 18, United States Code, is amended by inserting the following before the semicolon: '', whether or not the defendant knew that the operation was required to comply with such registration requirements''.

(c) AUTHORITY TO INVESTIGATE.—Section 1960 of title 18, United States Code, is amended by adding at the end the following:

''(c) Violations of this section may be investigated by the Attorney General, the Secretary of the Treasury, and the Secretary of the Department of Homeland Security.''.

**SEC. ___04. ASSETS OF PERSONS COMMITTING TERRORIST ACTS AGAINST FOREIGN COUNTRIES OR INTERNATIONAL ORGANIZATIONS.**

Section 981(a)(1)(G) of title 18, United States Code, is amended by—

(1) striking ''or'' at the end of clause (ii);

(2) striking the period at the end of clause (iii) and inserting ''; or''; and

(3) inserting after clause (iii) the following:

''(iv) of any individual, entity, or organization engaged in planning or perpetrating any act of international terrorism (as defined in section 2331) against any international organization (as defined in section 209 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 4309(b))) or against any foreign government. Where the property sought for forfeiture is located beyond the territorial boundaries of the United States, an act in furtherance of such planning or perpetration must have occurred within the jurisdiction of the United States.''.

**SEC. ___05. MONEY LAUNDERING THROUGH INFORMAL VALUE TRANSFER SYSTEMS.**

Section 1956(a) of title 18, United States Code, is amended by adding at the end the following:

''(4) A transaction described in paragraph (1), or a transportation, transmission, or transfer described in paragraph (2) shall be deemed to involve the proceeds of specified unlawful activity, if the transaction, transportation, transmission, or transfer is part of a single plan or arrangement whose purpose is described in either of those paragraphs and one part of such plan or arrangement actually involves the proceeds of specified unlawful activity.''.

**SEC. ___06. FINANCING OF TERRORISM.**

(a) CONCEALMENT.—Section 2339C(c)(2) of title 18, United States Code, is amended to read as follows:

''(2) knowingly conceals or disguises the nature, location, source, ownership, or control of any material support, or resources, or any funds or proceeds of such funds—

''(A) knowing or intending that the support or resources are to be provided, or knowing that the support or resources were provided, in violation of section 2339B; or

''(B) knowing or intending that any such funds are to be provided or collected, or knowing that the funds were provided or collected, in violation of subsection (a),

shall be punished as prescribed in subsection (d)(2).''.

(b) DEFINITION.—Section 2339C(e) of title 18, United States Code, is amended—

(1) in paragraph (12), by striking ''and'' at the end;

(2) by redesignating paragraph (13) as paragraph (14); and

(3) by inserting after paragraph (12) the following:

''(13) the term 'material support or resources' has the same meaning as in section 2339B(g)(4); and''.

**SEC. ___07. MISCELLANEOUS AND TECHNICAL AMENDMENTS.**

(a) CRIMINAL FORFEITURE.—Section 982(b)(2) of title 18, United States Code, is amended, by striking ''The substitution'' and inserting ''With respect to a forfeiture under subsection (a)(1), the substitution''.

(b) TECHNICAL AMENDMENTS TO SECTIONS 1956 AND 1957.—

(1) UNLAWFUL ACTIVITY.—Section 1956(c)(7)(F) of title 18, United States Code, is amended by inserting '', as defined in section 24'' before the period.

(2) PROPERTY FROM UNLAWFUL ACTIVITY.—Section 1957 of title 18, United States Code, is amended—

(A) in subsection (a), by striking ''engages or attempts to engage in'' and inserting ''conducts or attempts to conduct''; and

(B) in subsection (f), by inserting the following after paragraph (3):

''(4) the term 'conducts' has the same meaning as it does for purposes of section 1956 of this title.''.

(c) OBSTRUCTION OF JUSTICE.—Section 1510(b)(3)(B) of title 18, United States Code, is amended by striking ''or'' the first time it appears and inserting '', a subpoena issued pursuant to section 1782 of title 28, or''.

(d) INTERNATIONAL TERRORISM.—Section 2332b(g)(5)(B) of title 18, United States Code, is amended by inserting '')'' after ''2339C (relating to financing of terrorism''.

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**SA 3791.** Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. ___. WEAPONS OF MASS DESTRUCTION.**

(a) EXPANSION OF JURISDICTIONAL BASES AND SCOPE.—Section 2332a of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking paragraph (2) and inserting the following:

''(2)(A) against any person or property within the United States; and

''(B)(i) the mail or any facility of interstate or foreign commerce is used in furtherance of the offense;

''(ii) such property is used in interstate or foreign commerce or in an activity that affects interstate or foreign commerce;

''(iii) any perpetrator travels in or causes another to travel in interstate or foreign commerce in furtherance of the offense; or

''(iv) the offense, or the results of the offense, affect interstate or foreign commerce, or, in the case of a threat, attempt, or conspiracy, would have affected interstate or foreign commerce;'';

(B) in paragraph (3), by striking the comma at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(4) against any property within the United States that is owned, leased, or used by a foreign government,''; and

(2) in subsection (c)—

(A) in paragraph (1), by striking ''and'' at the end;

(B) in paragraph (2), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(3) the term 'property' includes all real and personal property.''.

(b) RESTORATION OF THE COVERAGE OF CHEMICAL WEAPONS.—

(1) IN GENERAL.—Section 2332a of title 18, United States Code, as amended by this Act, is further amended by—

(A) in the section heading, by striking ''CERTAIN'';

(B) in subsection (a), by striking ''(other than a chemical weapon as that term is defined in section 229F)''; and

(C) in subsection (b), by striking ''(other than a chemical weapon (as that term is defined in section 229F))''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 113B of title 18, United States Code, is amended in the matter relating to section 2332a by striking ''certain''.

(c) EXPANSION OF CATEGORIES OF RESTRICTED PERSONS SUBJECT TO PROHIBITIONS RELATING TO SELECT AGENTS.—Section 175b(d)(2) of title 18, United States Code, is amended—

(1) in subparagraph (G)—

(A) by inserting ''(i)'' after ''(G)'';

(B) by striking ''or'' after the semicolon; and

(C) by adding at the end the following:

''(ii) acts for or on behalf of, or operates subject to the direction or control of, a government or official of a country described in this subparagraph;''; and

(2) in subparagraph (H), by striking the period and inserting ''; or''; and

(3) by adding at the end the following:

''(I) is a member of, acts for or on behalf of, or operates subject to the direction or control of, a terrorist organization (as that term is defined under section 212(a)(3)B)(vi) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi))).''.

(d) CONFORMING AMENDMENT TO REGULATIONS.—

(1) IN GENERAL.—Section 175b(a)(1) of title 18, United States Code, is amended by striking ''as a select agent in Appendix A'' and all that follows through the period and inserting ''as a non-overlap or overlap select biological agent or toxin in sections 73.4 and 73.5 of title 42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act, and is not excluded under sections 73.4 and 73.5 or exempted under section 73.6 of title 42, Code of Federal Regulations.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date that sections 73.4, 73.5, and 73.6 of title 42, Code of Federal Regulations, become effective.

**SEC. ___. PARTICIPATION IN NUCLEAR AND WEAPONS OF MASS DESTRUCTION THREATS TO THE UNITED STATES.**

(a) ATOMIC ENERGY ACT.—Section 57(b) of the Atomic Energy Act of 1954 (42 U.S.C. 2077(b)) is amended by striking ''in the production of any special nuclear material'' and inserting ''or participate in the development or production of any special nuclear material or atomic weapon''.

(b) NUCLEAR WEAPON AND WMD THREATS.—

(1) IN GENERAL.—Chapter 39 of title 18, United States Code, is amended by adding at the end the following:

**''§ 838. Participation in nuclear and weapons of mass destruction threats to the United States**

''(a) IN GENERAL.—Whoever, within the United States, or subject to the jurisdiction of the United States, willfully participates in or provides material support or resources (as that term is defined under section 2339A) to a nuclear weapons program, or other weapons of mass destruction program of a foreign terrorist power, or attempts or conspires to do so, shall be imprisoned for not more than 20 years.

''(b) JURISDICTION.—There is extraterritorial Federal jurisdiction over an offense under this section.

''(c) DEFINITIONS.—As used in this section—

''(1) FOREIGN TERRORIST POWER.—The term 'foreign terrorist power' means a terrorist organization designated under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189), or a state sponsor of terrorism designated under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405), or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

''(2) NUCLEAR WEAPON.—The term 'nuclear weapon' means any weapon that contains or uses nuclear material (as that term is defined under section 831(f)(1)).

''(3) NUCLEAR WEAPONS PROGRAM.—The term 'nuclear weapons program' means a program or plan for the development, acquisition, or production of any nuclear weapon or weapons.

''(4) WEAPONS OF MASS DESTRUCTION PROGRAM.—The term 'weapons of mass destruction program' means a program or plan for the development, acquisition, or production of any weapon or weapons of mass destruction (as that term is defined in section 2332a(c)).''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 39 of title 18, United States Code, is amended by adding at the end the following:

''Sec. 838. Participation in nuclear and weapons of mass destruction threats to the United States.''.

(c) ACT OF TERRORISM TRANSCENDING NATIONAL BOUNDARIES.—Section 2332b(g)(5)(B)(i) of title 18, United States Code, is amended by inserting ''832 (relating to participation in nuclear and weapons of mass destruction threats to the United States)'' after ''nuclear materials),''.

**Subtitle ___—Prevention of Terrorist Access to Special Weapons Act**

**SEC. ___01. SHORT TITLE.**

This subtitle may be cited as the ''Prevention of Terrorist Access to Special Weapons Act of 2004''.

**SEC. ___02. MISSILE SYSTEMS DESIGNED TO DESTROY AIRCRAFT.**

(a) IN GENERAL.—Chapter 113B of title 18, United States Code, is amended by adding after section 2332g, as added by this Act, the following:

**''§ 2332h. Missile systems designed to destroy aircraft**

''(a) UNLAWFUL CONDUCT.—

''(1) IN GENERAL.—Except as provided in paragraph (3), it shall be unlawful for any person to knowingly produce, construct, otherwise acquire, transfer directly or indirectly, receive, possess, import, export, or use, or possess and threaten to use—

''(A) an explosive or incendiary rocket or missile that is guided by any system designed to enable the rocket or missile to—

''(i) seek or proceed toward energy radiated or reflected from an aircraft or toward an image locating an aircraft; or

''(ii) otherwise direct or guide the rocket or missile to an aircraft;

''(B) any device designed or intended to launch or guide a rocket or missile described in subparagraph (A); or

''(C) any part or combination of parts designed or redesigned for use in assembling or fabricating a rocket, missile, or device described in subparagraph (A) or (B).

''(2) NONWEAPON.—Paragraph (1)(A) does not apply to any device that is neither designed nor redesigned for use as a weapon.

''(3) EXCLUDED CONDUCT.—This subsection does not apply with respect to—

''(A) conduct by or under the authority of the United States or any department or agency thereof or of a State or any department or agency thereof; or

''(B) conduct pursuant to the terms of a contract with the United States or any department or agency thereof or with a State or any department or agency thereof.

''(b) JURISDICTION.—Conduct prohibited by subsection (a) is within the jurisdiction of the United States if—

''(1) the offense occurs in or affects interstate or foreign commerce;

''(2) the offense occurs outside of the United States and is committed by a national of the United States;

''(3) the offense is committed against a national of the United States while the national is outside the United States;

''(4) the offense is committed against any property that is owned, leased, or used by the United States or by any department or agency of the United States, whether the property is within or outside the United States; or

''(5) an offender aids or abets any person over whom jurisdiction exists under this subsection in committing an offense under this section or conspires with any person over whom jurisdiction exists under this subsection to commit an offense under this section.

''(c) CRIMINAL PENALTIES.—

''(1) IN GENERAL.—Any person who violates, or attempts or conspires to violate, subsection (a) shall be fined not more than $2,000,000 and shall be sentenced to a term of imprisonment not less than 30 years or to imprisonment for life.

''(2) LIFE IMPRISONMENT.—Any person who, in the course of a violation of subsection (a), uses, attempts or conspires to use, or possesses and threatens to use, any item or items described in subsection (a), shall be fined not more than $2,000,000 and imprisoned for life.

''(3) DEATH PENALTY.—If the death of another results from a person's violation of subsection (a), the person shall be fined not more than $2,000,000 and punished by death or imprisoned for life.

''(d) DEFINITION.—As used in this section, the term 'aircraft' has the definition set forth in section 40102(a)(6) of title 49, United States Code.''.

(b) CHAPTER ANALYSIS.—The table of sections of chapter 113B of title 18, United States Code, is amended by inserting at the end the following:

''2332h. Missile systems designed to destroy aircraft.''.

**SEC. ___03. ATOMIC WEAPONS.**

(a) PROHIBITIONS.—Section 92 of the Atomic Energy Act of 1954 (42 U.S.C. 2122) is amended by—

(1) inserting at the beginning ''a.'' before ''It'';

(2) inserting ''knowingly'' after ''for any person to'';

(3) striking ''or'' before ''export'';

(4) striking ''transfer or receive in interstate or foreign commerce,'' before ''manufacture'';

(5) inserting ''receive,'' after ''acquire,'';

(6) inserting '', or use, or possess and threaten to use,'' before ''any atomic weapon'';

(7) inserting at the end the following:

''b. Conduct prohibited by subsection a. is within the jurisdiction of the United States if—

''(1) the offense occurs in or affects interstate or foreign commerce; the offense occurs outside of the United States and is committed by a national of the United States;

''(2) the offense is committed against a national of the United States while the national is outside the United States;

''(3) the offense is committed against any property that is owned, leased, or used by the United States or by any department or agency of the United States, whether the property is within or outside the United States; or

''(4) an offender aids or abets any person over whom jurisdiction exists under this subsection in committing an offense under this section or conspires with any person over whom jurisdiction exists under this subsection to commit an offense under this section.''.

(b) VIOLATIONS.—Section 222 of the Atomic Energy Act of 1954 (42 U.S.C. 2272) is amended by—

(1) inserting at the beginning ''a.'' before ''Whoever'';

(2) striking '', 92,''; and

(3) inserting at the end the following:

''b. Any person who violates, or attempts or conspires to violate, section 92 shall be fined not more than $2,000,000 and sentenced to a term of imprisonment not less than 30 years or to imprisonment for life. Any person who, in the course of a violation of section 92, uses, attempts or conspires to use, or possesses and threatens to use, any atomic weapon shall be fined not more than $2,000,000 and imprisoned for life. If the death of another results from a person's violation of section 92, the person shall be fined not more than $2,000,000 and punished by death or imprisoned for life.''.

**SEC. ___04. RADIOLOGICAL DISPERSAL DEVICES.**

(a) IN GENERAL.—Chapter 113B of title 18, United States Code, is amended by adding after section 2332h, as added by this Act, the following:

**''§ 2332i. Radiological dispersal devices**

''(a) UNLAWFUL CONDUCT.—

''(1) IN GENERAL.—Except as provided in paragraph (2), it shall be unlawful for any person to knowingly produce, construct, otherwise acquire, transfer directly or indirectly, receive, possess, import, export, or use, or possess and threaten to use—

''(A) any weapon that is designed or intended to release radiation or radioactivity at a level dangerous to human life; or

''(B) any device or other object that is capable of and designed or intended to endanger human life through the release of radiation or radioactivity.

''(2) EXCEPTION.—This subsection does not apply with respect to—

''(A) conduct by or under the authority of the United States or any department or agency thereof; or

''(B) conduct pursuant to the terms of a contract with the United States or any department or agency thereof.

''(b) JURISDICTION.—Conduct prohibited by subsection (a) is within the jurisdiction of the United States if—

''(1) the offense occurs in or affects interstate or foreign commerce;

''(2) the offense occurs outside of the United States and is committed by a national of the United States;

''(3) the offense is committed against a national of the United States while the national is outside the United States;

''(4) the offense is committed against any property that is owned, leased, or used by the United States or by any department or agency of the United States, whether the property is within or outside the United States; or

''(5) an offender aids or abets any person over whom jurisdiction exists under this subsection in committing an offense under this section or conspires with any person over whom jurisdiction exists under this subsection to commit an offense under this section.

''(c) CRIMINAL PENALTIES.—

''(1) IN GENERAL.—Any person who violates, or attempts or conspires to violate, subsection (a) shall be fined not more than $2,000,000 and shall be sentenced to a term of imprisonment not less than 30 years or to imprisonment for life.

''(2) LIFE IMPRISONMENT.—Any person who, in the course of a violation of subsection (a), uses, attempts or conspires to use, or possesses and threatens to use, any item or items described in subsection (a), shall be fined not more than $2,000,000 and imprisoned for life.

''(3) DEATH PENALTY.—If the death of another results from a person's violation of subsection (a), the person shall be fined not more than $2,000,000 and punished by death or imprisoned for life.''.

(b) CHAPTER ANALYSIS.—The table of sections of chapter 113B of title 18, United States Code, is amended by inserting at the end the following:

''2332i. Radiological dispersal devices.''.

**SEC. ___05. VARIOLA VIRUS.**

(a) IN GENERAL.—Chapter 10 of title 18, United States Code, is amended by inserting after section 175b the following:

**''§ 175c. Variola virus**

''(a) UNLAWFUL CONDUCT.—

''(1) IN GENERAL.—Except as provided in paragraph (2), it shall be unlawful for any person to knowingly produce, engineer, synthesize, acquire, transfer directly or indirectly, receive, possess, import, export, or

use, or possess and threaten to use, variola virus.

''(2) EXCEPTION.—This subsection does not apply to conduct by, or under the authority of, the Secretary of Health and Human Services.

''(b) JURISDICTION.—Conduct prohibited by subsection (a) is within the jurisdiction of the United States if—

''(1) the offense occurs in or affects interstate or foreign commerce;

''(2) the offense occurs outside of the United States and is committed by a national of the United States;

''(3) the offense is committed against a national of the United States while the national is outside the United States;

''(4) the offense is committed against any property that is owned, leased, or used by the United States or by any department or agency of the United States, whether the property is within or outside the United States; or

''(5) an offender aids or abets any person over whom jurisdiction exists under this subsection in committing an offense under this section or conspires with any person over whom jurisdiction exists under this subsection to commit an offense under this section.

''(c) CRIMINAL PENALTIES.—

''(1) IN GENERAL.—Any person who violates, or attempts or conspires to violate, subsection (a) shall be fined not more than $2,000,000 and shall be sentenced to a term of imprisonment not less than 30 years or to imprisonment for life.

''(2) LIFE IMPRISONMENT.—Any person who, in the course of a violation of subsection (a), uses, attempts or conspires to use, or possesses and threatens to use, any item or items described in subsection (a), shall be fined not more than $2,000,000 and imprisoned for life.

''(3) DEATH PENALTY.—If the death of another results from a person's violation of subsection (a), the person shall be fined not more than $2,000,000 and punished by death or imprisoned for life.

''(d) DEFINITION.—As used in this section, the term 'variola virus' means a virus that can cause human smallpox or any derivative of the variola major virus that contains more than 85 percent of the gene sequence of the variola major virus or the variola minor virus.''.

(b) CHAPTER ANALYSIS.—The table of sections of chapter 10 of title 18, United States Code, is amended by inserting at the end the following:

''175c. Variola virus.''.

**SEC. ___06. INTERCEPTION OF COMMUNICATIONS.**

Section 2516(1) of title 18, United States Code, is amended—

(1) in paragraph (a), by inserting ''2122 and'' after ''sections'';

(2) in paragraph (c), by inserting ''section 175c (relating to variola virus),'' after ''section 175 (relating to biological weapons),'';

(3) in paragraph (q), by inserting ''2332h, 2332i,'' after ''2332f,''; and

(4) in paragraph (q), by striking ''or 2339C'' and inserting ''2339C, or 2339E''.

**SEC. ___07. AMENDMENTS TO SECTION 2332b(g)(5)(B) OF TITLE 18, UNITED STATES CODE.**

Section 2332b(g)(5)(B) of title 18, United States Code, is amended—

(1) in clause (i)—

(A) by inserting before ''2339 (relating to harboring terrorists)'' the following: ''2332h (relating to missile systems designed to destroy aircraft), 2332i (relating to radiological dispersal devices),'';

(B) by inserting ''175c (relating to variola virus),'' after ''175 or 175b (relating to biological weapons),''; and

(C) by inserting ''2339E (receiving military-type training from a foreign terrorist organization),'' after ''2339C (relating to financing of terrorism),''; and

(2) in clause (ii)—

(A) by striking ''section'' and inserting ''sections 92 (relating to prohibitions governing atomic weapons) or''; and

(B) by inserting ''2122 or'' before ''2284''.

**SEC. ___08. AMENDMENTS TO SECTION 1956(c)(7)(D) OF TITLE 18, UNITED STATES CODE.**

Section 1956(c)(7)(D), title 18, United States Code, is amended—

(1) by inserting after ''section 152 (relating to concealment of assets; false oaths and claims; bribery),'' the following: ''section 175c (relating to the variola virus),'';

(2) by inserting after ''section 2332(b) (relating to international terrorist acts transcending national boundaries),'' the following: ''section 2332h (relating to missile systems designed to destroy aircraft), section 2332i (relating to radiological dispersal devices),''; and

(3) striking ''or'' after ''any felony violation of the Foreign Agents Registration Act of 1938,'' and after ''any felony violation of the Foreign Corrupt Practices Act'', striking '';'' and inserting '', or section 92 of the Atomic Energy Act of 1954 (42 U.S.C. 2122) (relating to prohibitions governing atomic weapons)''.

**SEC. ___09. EXPORT LICENSING PROCESS.**

Section 38(g)(1)(A) of the Arms Export Control Act (22 U.S.C. 2778) is amended—

(1) by striking ''or'' before ''(xi)''; and

(2) by inserting after clause (xi) the following: ''or (xii) section 3, 4, 5, and 6 of the Prevention of Terrorist Access to Destructive Weapons Act of 2004, relating to missile systems designed to destroy aircraft (18 U.S.C. 2332g), prohibitions governing atomic weapons (42 U.S.C. 2122), radiological dispersal devices (18 U.S.C. 2332h), and variola virus (18 U.S.C. 175b);''.

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**SA 3792.** Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 2845, to reform the intelligence community and the intelligence and intelligence-related activities of the United States Government, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. ___. JUDICIALLY ENFORCEABLE SUBPOENAS IN TERRORISM INVESTIGATIONS.**

(a) IN GENERAL.—Chapter 113B of title 18, United States Code, is amended by inserting after section 2332f the following:

**''§ 2332g. Judicially enforceable terrorism subpoenas**

''(a) AUTHORIZATION OF USE.—

''(1) IN GENERAL.—In any investigation concerning a Federal crime of terrorism (as defined under section 2332b(g)(5)), the Attorney General may issue in writing and cause to be served a subpoena requiring the production of any records or other materials that the Attorney General finds relevant to the investigation, or requiring testimony by the custodian of the materials to be produced concerning the production and authenticity of those materials.

''(2) CONTENTS.—A subpoena issued under paragraph (1) shall describe the records or items required to be produced and prescribe a return date within a reasonable period of time within which the records or items can be assembled and made available.

''(3) ATTENDANCE OF WITNESSES AND PRODUCTION OF RECORDS.—

''(A) IN GENERAL.—The attendance of witnesses and the production of records may be required from any place in any State, or in any territory or other place subject to the jurisdiction of the United States at any designated place of hearing.

''(B) LIMITATION.—A witness shall not be required to appear at any hearing more than 500 miles distant from the place where he was served with a subpoena.

''(C) REIMBURSEMENT.—Witnesses summoned under this section shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States.

''(b) SERVICE.—

''(1) IN GENERAL.—A subpoena issued under this section may be served by any person designated in the subpoena as the agent of service.

''(2) SERVICE OF SUBPOENA.—

''(A) NATURAL PERSON.—Service of a subpoena upon a natural person may be made by personal delivery of the subpoena to that person, or by certified mail with return receipt requested.

''(B) BUSINESS ENTITIES AND ASSOCIATIONS.—Service of a subpoena may be made upon a domestic or foreign corporation, or upon a partnership or other unincorporated association that is subject to suit under a common name, by delivering the subpoena to an officer, to a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process.

''(C) PROOF OF SERVICE.—The affidavit of the person serving the subpoena entered by that person on a true copy thereof shall be sufficient proof of service.

''(c) ENFORCEMENT.—

''(1) IN GENERAL.—In the case of the contumacy by, or refusal to obey a subpoena issued to, any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which the investigation is carried on, or the subpoenaed person resides, carries on business, or may be found, to compel compliance with the subpoena.

''(2) ORDER.—A court of the United States described under paragraph (1) may issue an order requiring the subpoenaed person, in accordance with the subpoena, to produce records or other materials, or to give testimony concerning the production and authenticity of those materials. Any failure to obey the order of the court may be punished by the court as contempt thereof.

''(3) SERVICE OF PROCESS.—Any process under this subsection may be served in any judicial district in which the person may be found.

''(d) NONDISCLOSURE REQUIREMENT.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, if the Attorney General certifies that otherwise there may result a danger to the national security of the United States, no person shall disclose to any other person that a subpoena was received or records were provided pursuant to this section, other than to—

''(A) those persons to whom such disclosure is necessary in order to comply with the subpoena;

''(B) an attorney to obtain legal advice with respect to testimony or the production of records in response to the subpoena; or

''(C) other persons as permitted by the Attorney General.

''(2) NOTICE OF NONDISCLOSURE REQUIREMENT.—The subpoena, or an officer, employee, or agency of the United States in writing, shall notify the person to whom the subpoena is directed of the nondisclosure requirements under paragraph (1).

''(3) FURTHER APPLICABILITY OF NONDISCLOSURE REQUIREMENTS.—Any person who receives a disclosure under this subsection shall be subject to the same prohibitions on disclosure under paragraph (1).

''(4) ENFORCEMENT OF NONDISCLOSURE REQUIREMENT.—Whoever knowingly violates paragraph (1) or (3) shall be imprisoned for not more than 1 year, and if the violation is committed with the intent to obstruct an investigation or judicial proceeding, shall be imprisoned for not more than 5 years.

''(5) TERMINATION OF NONDISCLOSURE REQUIREMENT.—If the Attorney General concludes that a nondisclosure requirement no longer is justified by a danger to the national security of the United States, an officer, employee, or agency of the United States shall notify the relevant person that the prohibition of disclosure is no longer applicable.

''(e) JUDICIAL REVIEW.—

''(1) IN GENERAL.—At any time before the return date specified in a summons issued under this section, the person or entity summoned may, in the United States district court for the district in which that person or entity does business or resides, petition for an order modifying or setting aside the summons.

''(2) MODIFICATION OF NONDISCLOSURE REQUIREMENT.—Any court described under paragraph (1) may modify or set aside a nondisclosure requirement imposed under subsection (d) at the request of a person to whom a subpoena has been directed, unless there is reason to believe that the nondisclosure requirement is justified because otherwise there may result a danger to the national security of the United States.

''(3) REVIEW OF GOVERNMENT SUBMISSIONS.—In all proceedings under this subsection, the court shall review the submission of the Federal Government, which may include classified information, ex parte and in camera.

''(f) IMMUNITY FROM CIVIL LIABILITY.—Any person, including officers, agents, and employees of a non-natural person, who in good faith produce the records or items requested in a subpoena, shall not be liable in any court of any State or the United States to any customer or other person for such production, or for nondisclosure of that production to the customer or other person.

''(g) REPORTING REQUIREMENT.—The Attorney General shall submit to the Select Committee on Intelligence of the Senate and the permanent Select Committee on Intelligence of the House of Representatives each year a report setting forth with respect to the 1-year period ending on the date of such report—

''(1) the aggregate number of subpoenas issued under this section; and

''(2) the circumstances under which each such subpoena was issued.

''(h) GUIDELINES.—The Attorney General shall, by rule, establish such guidelines as are necessary to ensure the effective implementation of this section.''.

(b) AMENDMENT TO TABLE OF SECTIONS.—The table of sections of chapter 113B of title 18, United States Code, is amended by inserting after the item relating to section 2332f the following:

''2332g. Judicially enforceable terrorism subpoenas.''.

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**SA 3793.** Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 2845, to reform the intelligence community and the intelligence-related activities of the United States Government, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**TITLE ___—TRANSIT PROTECTION**

**Subtitle A—Railroad Carriers and Mass Transportation Protection Act**

**SEC. ___01. SHORT TITLE.**

This subtitle may be cited as the ''Railroad Carriers and Mass Transportation Protection Act of 2004''.

**SEC. ___02. ATTACKS AGAINST RAILROAD CARRIERS, PASSENGER VESSELS, AND MASS TRANSPORTATION SYSTEMS.**

(a) IN GENERAL.—Chapter 97 of title 18, United States Code, is amended by striking sections 1992 through 1993 and inserting the following:

**''§ 1992. Terrorist attacks and other violence against railroad carriers, passenger vessels, and against mass transportation systems on land, on water, or through the air**

''(a) GENERAL PROHIBITIONS.—Whoever, in a circumstance described in subsection (c), knowingly—

''(1) wrecks, derails, sets fire to, or disables railroad on-track equipment, a passenger vessel, or a mass transportation vehicle;

''(2) with intent to endanger the safety of any passenger or employee of a railroad carrier, passenger vessel, or mass transportation provider, or with a reckless disregard for the safety of human life, and without previously obtaining the permission of the railroad carrier, mass transportation provider, or owner of the passenger vessel—

''(A) places any biological agent or toxin, destructive substance, or destructive device in, upon, or near railroad on-track equipment, a passenger vessel, or a mass transportation vehicle; or

''(B) releases a hazardous material or a biological agent or toxin on or near the property of a railroad carrier, owner of a passenger vessel, or mass transportation provider;

''(3) sets fire to, undermines, makes unworkable, unusable, or hazardous to work on or use, or places any biological agent or toxin, destructive substance, or destructive device in, upon, or near any—

''(A) tunnel, bridge, viaduct, trestle, track, electromagnetic guideway, signal, station, depot, warehouse, terminal, or any other way, structure, property, or appurtenance used in the operation of, or in support of the operation of, a railroad carrier, without previously obtaining the permission of the railroad carrier, and with intent to, or knowing or having reason to know such activity would likely, derail, disable, or wreck railroad on-track equipment;

''(B) garage, terminal, structure, track, electromagnetic guideway, supply, or facility used in the operation of, or in support of the operation of, a mass transportation vehicle, without previously obtaining the permission of the mass transportation provider, and with intent to, or knowing or having reason to know such activity would likely, derail, disable, or wreck a mass transportation vehicle used, operated, or employed by a mass transportation provider; or

''(C) structure, supply, or facility used in the operation of, or in the support of the operation of, a passenger vessel, without previously obtaining the permission of the owner of the passenger vessel, and with intent to, or knowing or having reason to know that such activity would likely disable or wreck a passenger vessel;

''(4) removes an appurtenance from, damages, or otherwise impairs the operation of a railroad signal system or mass transportation signal or dispatching system, including a train control system, centralized dispatching system, or highway-railroad grade crossing warning signal, without authorization from the rail carrier or mass transportation provider;

''(5) with intent to endanger the safety of any passenger or employee of a railroad carrier, owner of a passenger vessel, or mass transportation provider or with a reckless disregard for the safety of human life, interferes with, disables, or incapacitates any dispatcher, driver, captain, locomotive engineer, railroad conductor, or other person while the person is employed in dispatching, operating, or maintaining railroad on-track equipment, a passenger vessel, or a mass transportation vehicle;

''(6) engages in conduct, including the use of a dangerous weapon, with the intent to cause death or serious bodily injury to any person who is on the property of a railroad carrier, owner of a passenger vessel, or mass transportation provider that is used for railroad or mass transportation purposes;

''(7) conveys false information, knowing the information to be false, concerning an attempt or alleged attempt that was made, is being made, or is to be made, to engage in a violation of this subsection; or

''(8) attempts, threatens, or conspires to engage in any violation of any of paragraphs (1) through (7);

shall be fined under this title or imprisoned not more than 20 years, or both.

''(b) AGGRAVATED OFFENSE.—Whoever commits an offense under subsection (a) in a circumstance in which—

''(1) the railroad on-track equipment, passenger vessel, or mass transportation vehicle was carrying a passenger or employee at the time of the offense;

''(2) the railroad on-track equipment, passenger vessel, or mass transportation vehicle was carrying high-level radioactive waste or spent nuclear fuel at the time of the offense;

''(3) the railroad on-track equipment, passenger vessel, or mass transportation vehicle was carrying a hazardous material at the time of the offense that—

''(A) was required to be placarded under subpart F of part 172 of title 49, Code of Federal Regulations; and

''(B) is identified as class number 3, 4, 5, 6.1, or 8 and packing group I or packing group II, or class number 1, 2, or 7 under the hazardous materials table of section 172.101 of title 49, Code of Federal Regulations; or

''(4) the offense results in the death of any person;

shall be fined under this title or imprisoned for any term of years or life, or both. In the case of a violation described in paragraph (2), the term of imprisonment shall be not less than 30 years; and, in the case of a violation described in paragraph (4), the offender shall be fined under this title and imprisoned for life and be subject to the death penalty.

''(c) CRIMES AGAINST PUBLIC SAFETY OFFICER.—Whoever commits an offense under subsection (a) that results in death or serious bodily injury to a public safety officer while the public safety officer was engaged in the performance of official duties, or on account of the public safety officer's performance of official duties, shall be imprisoned for a term of not less than 20 years and, if death results, shall be imprisoned for life and be subject to the death penalty.

''(d) CIRCUMSTANCES REQUIRED FOR OFFENSE.—A circumstance referred to in subsection (a) is any of the following:

''(1) Any of the conduct required for the offense is, or, in the case of an attempt, threat, or conspiracy to engage in conduct, the conduct required for the completed offense would be, engaged in, on, against, or affecting a mass transportation provider, owner of a passenger vessel, or railroad carrier engaged in or affecting interstate or foreign commerce.

''(2) Any person travels or communicates across a State line in order to commit the offense, or transports materials across a State line in aid of the commission of the offense.

''(e) NONAPPLICABILITY.—Subsection (a) does not apply to the conduct with respect to a destructive substance or destructive device that is also classified under chapter 51 of title 49 as a hazardous material in commerce if the conduct—

''(1) complies with chapter 51 of title 49 and regulations, exemptions, approvals, and orders issued under that chapter, or

''(2) constitutes a violation, other than a criminal violation, of chapter 51 of title 49 or a regulation or order issued under that chapter.

''(f) DEFINITIONS.—In this section—

''(1) the term 'biological agent' has the meaning given to that term in section 178(1);

''(2) the term 'dangerous weapon' means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, including a pocket knife with a blade of less than 2½ inches in length and a box cutter;

''(3) the term 'destructive device' has the meaning given to that term in section 921(a)(4);

''(4) the term 'destructive substance' means an explosive substance, flammable material, infernal machine, or other chemical, mechanical, or radioactive device or material, or matter of a combustible, contaminative, corrosive, or explosive nature, except that the term 'radioactive device' does not include any radioactive device or material used solely for medical, industrial, research, or other peaceful purposes;

''(5) the term 'hazardous material' has the meaning given to that term in chapter 51 of title 49;

''(6) the term 'high-level radioactive waste' has the meaning given to that term in section 2(12) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(12));

''(7) the term 'mass transportation' has the meaning given to that term in section 5302(a)(7) of title 49, except that the term includes school bus, charter, and sightseeing transportation;

''(8) the term 'on-track equipment' means a carriage or other contrivance that runs on rails or electromagnetic guideways;

''(9) the term 'public safety officer' has the meaning given such term in section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b);

''(10) the term 'railroad on-track equipment' means a train, locomotive, tender, motor unit, freight or passenger car, or other on-track equipment used, operated, or employed by a railroad carrier;

''(11) the term 'railroad' has the meaning given to that term in chapter 201 of title 49;

''(12) the term 'railroad carrier' has the meaning given to that term in chapter 201 of title 49;

''(13) the term 'serious bodily injury' has the meaning given to that term in section 1365;

''(14) the term 'spent nuclear fuel' has the meaning given to that term in section 2(23) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(23));

''(15) the term 'State' has the meaning given to that term in section 2266;

''(16) the term 'toxin' has the meaning given to that term in section 178(2);

''(17) the term 'vehicle' means any carriage or other contrivance used, or capable of being used, as a means of transportation on land, on water, or through the air; and

''(18) the term 'passenger vessel' has the meaning given that term in section 2101(22) of title 46, United States Code, and includes a small passenger vessel, as that term is defined under section 2101(35) of that title.''.

(b) CONFORMING AMENDMENTS.—

(1) TABLE OF SECTIONS.—The table of sections at the beginning of chapter 97 of title 18, United States Code, is amended—

(A) by striking ''**RAILROADS**'' in the chapter heading and inserting ''**RAILROAD CARRIERS AND MASS TRANSPORTATION SYSTEMS ON LAND, ON WATER, OR THROUGH THE AIR**'';

(B) by striking the items relating to sections 1992 and 1993; and

(C) by inserting after the item relating to section 1991 the following:

''1992. Terrorist attacks and other violence against railroad carriers and against mass transportation systems on land, on water, or through the air.''.

(2) TABLE OF CHAPTERS.—The table of chapters at the beginning of part I of title 18, United States Code, is amended by striking the item relating to chapter 97 and inserting the following:

**''97. Railroad carriers and mass transportation systems on land, on water, or through the air ..... 1991''**.

(3) CONFORMING AMENDMENTS.—Title 18, United States Code, is amended—

(A) in section 2332b(g)(5)(B)(i), by striking ''1992 (relating to wrecking trains), 1993 (relating to terrorist attacks and other acts of violence against mass transportation systems),'' and inserting ''1992 (relating to terrorist attacks and other acts of violence against railroad carriers and against mass transportation systems on land, on water, or through the air),'';

(B) in section 2339A, by striking ''1993,''; and

(C) in section 2516(1)(c) by striking ''1992 (relating to wrecking trains),'' and inserting ''1992 (relating to terrorist attacks and other acts of violence against railroad carriers and against mass transportation systems on land, on water, or through the air),''.

## Subtitle B—Reducing Crime and Terrorism at America's Seaports Act

**SEC. ___11. SHORT TITLE.**

This subtitle may be cited as the ''Reducing Crime and Terrorism at America's Seaports Act of 2004''.

**SEC. ___12. ENTRY BY FALSE PRETENSES TO ANY SEAPORT.**

(a) IN GENERAL.—Section 1036 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (2), by striking ''or'' at the end;

(B) by redesignating paragraph (3) as paragraph (4); and

(C) by inserting after paragraph (2) the following:

''(3) any secure or restricted area (as that term is defined under section 2285(c)) of any seaport; or'';

(2) in subsection (b)(1), by striking ''5'' and inserting ''10'';

(3) in subsection (c)(1), by inserting '', captain of the seaport,'' after ''airport authority''; and

(4) in the section heading, by inserting ''or seaport'' after ''airport''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 47 of title 18 is amended by striking the matter relating to section 1036 and inserting the following:

''1036. Entry by false pretenses to any real property, vessel, or aircraft of the United States or secure area of any airport or seaport.''.

(c) DEFINITION OF SEAPORT.—Chapter 1 of title 18, United States Code, is amended by adding at the end the following:

**''§ 26. Definition of seaport**

''As used in this title, the term 'seaport' means all piers, wharves, docks, and similar structures to which a vessel may be secured, areas of land, water, or land and water under and in immediate proximity to such structures, and buildings on or contiguous to such structures, and the equipment and materials on such structures or in such buildings.''.

(d) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 1 of title 18 is amended by inserting after the matter relating to section 25 the following:

''26. Definition of seaport.''.

**SEC. ___13. CRIMINAL SANCTIONS FOR FAILURE TO HEAVE TO, OBSTRUCTION OF BOARDING, OR PROVIDING FALSE INFORMATION.**

(a) OFFENSE.—Chapter 109 of title 18, United States Code, is amended by adding at the end the following:

**''§ 2237. Criminal sanctions for failure to heave to, obstruction of boarding, or providing false information**

''(a)(1) It shall be unlawful for the master, operator, or person in charge of a vessel of the United States, or a vessel subject to the jurisdiction of the United States, to knowingly fail to obey an order by an authorized Federal law enforcement officer to heave to that vessel.

''(2) It shall be unlawful for any person on board a vessel of the United States, or a vessel subject to the jurisdiction of the United States, to—

''(A) forcibly resist, oppose, prevent, impede, intimidate, or interfere with a boarding or other law enforcement action authorized by any Federal law, or to resist a lawful arrest; or

''(B) provide information to a Federal law enforcement officer during a boarding of a vessel regarding the vessel's destination, origin, ownership, registration, nationality, cargo, or crew, which that person knows is false.

''(b) This section does not limit the authority of a customs officer under section 581 of the Tariff Act of 1930 (19 U.S.C. 1581), or any other provision of law enforced or administered by the Secretary of the Treasury or the Undersecretary for Border and Transportation Security of the Department of Homeland Security, or the authority of any Federal law enforcement officer under any law of the United States, to order a vessel to stop or heave to.

''(c) A foreign nation may consent or waive objection to the enforcement of United States law by the United States under this section by radio, telephone, or similar oral or electronic means. Consent or waiver may be proven by certification of the Secretary of State or the designee of the Secretary of State.

''(d) In this section—

''(1) the term 'Federal law enforcement officer' has the meaning given the term in section 115(c);

''(2) the term 'heave to' means to cause a vessel to slow, come to a stop, or adjust its course or speed to account for the weather conditions and sea state to facilitate a law enforcement boarding;

''(3) the term 'vessel subject to the jurisdiction of the United States' has the meaning given the term in section 2(c) of the Maritime Drug Law Enforcement Act (46 App. U.S.C. 1903(b)); and

''(4) the term 'vessel of the United States' has the meaning given the term in section 2(c) of the Maritime Drug Law Enforcement Act (46 App. U.S.C. 1903(b)).

''(e) Any person who intentionally violates the provisions of this section shall be fined under this title, imprisoned for not more than 5 years, or both.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 109, title 18, United States Code, is amended by inserting after the item for section 2236 the following:

''2237. Criminal sanctions for failure to heave to, obstruction of boarding, or providing false information.''.

**SEC. ___14. CRIMINAL SANCTIONS FOR VIOLENCE AGAINST MARITIME NAVIGATION, PLACEMENT OF DESTRUCTIVE DEVICES, AND MALICIOUS DUMPING.**

(a) VIOLENCE AGAINST MARITIME NAVIGATION.—Section 2280(a) of title 18, United States Code, is amended—

(1) in paragraph (1)—

(A) in subparagraph (H), by striking ''(G)'' and inserting ''(H)'';

(B) by redesignating subparagraphs (F), (G), and (H) as subparagraphs (G), (H), and (I), respectively; and

(C) by inserting after subparagraph (E) the following:

''(F) destroys, seriously damages, alters, moves, or tampers with any aid to maritime navigation maintained by the Saint Lawrence Seaway Development Corporation under the authority of section 4 of the Act of May 13, 1954 (33 U.S.C. 984), by the Coast Guard pursuant to section 81 of title 14, United States Code, or lawfully maintained under authority granted by the Coast Guard pursuant to section 83 of title 14, United States Code, if such act endangers or is likely to endanger the safe navigation of a ship;''; and

(2) in paragraph (2) by striking ''(C) or (E)'' and inserting ''(C), (E), or (F)''.

(b) PLACEMENT OF DESTRUCTIVE DEVICES.—

(1) IN GENERAL.—Chapter 111 of title 18, United States Code, is amended by adding after section 2280 the following:

**''§ 2280A. Devices or substances in waters of the United States likely to destroy or damage ships or to interfere with maritime commerce**

''(a) A person who knowingly places, or causes to be placed, in navigable waters of the United States, by any means, a device or substance which is likely to destroy or cause damage to a vessel or its cargo, or cause interference with the safe navigation of vessels, or interference with maritime commerce, such as by damaging or destroying marine terminals, facilities, and any other marine structure or entity used in maritime commerce, with the intent of causing such destruction or damage, or interference with the safe navigation of vessels or with maritime commerce, shall be fined under this title, imprisoned for any term of years or for life, or both; and if the death of any person results from conduct prohibited under this subsection, may be punished by death.

''(b) Nothing in this section shall be construed to apply to otherwise lawfully authorized and conducted activities of the United States Government.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 111 of title 18, United States Code, is amended by adding after the item related to section 2280 the following:

''2280A. Devices or substances in waters of the United States likely to destroy or damage ships or to interfere with maritime commerce.''.

(c) MALICIOUS DUMPING.—

(1) IN GENERAL.—Chapter 111 of title 18, United States Code, is amended by adding at the end the following:

**''§ 2282. Knowing discharge or release**

''(a) ENDANGERMENT OF HUMAN LIFE.—Any person who knowingly discharges or releases oil, a hazardous material, a noxious liquid substance, or any other dangerous substance into the navigable waters of the United States or the adjoining shoreline with the intent to endanger human life, health, or welfare shall be fined under this title and imprisoned for any term of years or for life.

''(b) ENDANGERMENT OF MARINE ENVIRONMENT.—Any person who knowingly discharges or releases oil, a hazardous material, a noxious liquid substance, or any other dangerous substance into the navigable waters of the United States or the adjacent shoreline with the intent to endanger the marine environment shall be fined under this title, imprisoned not more than 30 years, or both.

''(c) DEFINITIONS.—In this section:

''(1) DISCHARGE.—The term 'discharge' means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

''(2) HAZARDOUS MATERIAL.—The term 'hazardous material' has the meaning given the term in section 2101(14) of title 46, United States Code.

''(3) MARINE ENVIRONMENT.—The term 'marine environment' has the meaning given the term in section 2101(15) of title 46, United States Code.

''(4) NAVIGABLE WATERS.—The term 'navigable waters' has the meaning given the term in section 1362(7) of title 33, and also includes the territorial sea of the United States as described in Presidential Proclamation 5928 of December 27, 1988.

''(5) NOXIOUS LIQUID SUBSTANCE.—The term 'noxious liquid substance' has the meaning given the term in the MARPOL Protocol defined in section 2(1) of the Act to Prevent Pollution from Ships (33 U.S.C. 1901(a)(3)).''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 111 of title 18, United States Code, is amended by adding at the end the following:

''2282. Knowing discharge or release.''.

**SEC. ___15. TRANSPORTATION OF DANGEROUS MATERIALS AND TERRORISTS.**

(a) TRANSPORTATION OF DANGEROUS MATERIALS AND TERRORISTS.—Chapter 111 of title 18, as amended by this Act, is amended by adding at the end the following:

**''§ 2283. Transportation of explosive, biological, chemical, or radioactive or nuclear materials**

''(a) IN GENERAL.—Any person who knowingly and willfully transports aboard any vessel within the United States, on the high seas, or having United States nationality, an explosive or incendiary device, biological agent, chemical weapon, or radioactive or nuclear material, knowing that any such item is intended to be used to commit an offense listed under section 2332b(g)(5)(B), shall be fined under this title, imprisoned for any term of years or for life, or both; and if the death of any person results from conduct prohibited by this subsection, may be punished by death.

''(b) DEFINITIONS.—In this section:

''(1) BIOLOGICAL AGENT.—The term 'biological agent' means any biological agent, toxin, or vector (as those terms are defined in section 178).

''(2) BY-PRODUCT MATERIAL.—The term 'by-product material' has the meaning given that term in section 11(e) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)).

''(3) CHEMICAL WEAPON.—The term 'chemical weapon' has the meaning given that term in section 229F.

''(4) EXPLOSIVE OR INCENDIARY DEVICE.—The term 'explosive or incendiary device' has the meaning given the term in section 232(5).

''(5) NUCLEAR MATERIAL.—The term 'nuclear material' has the meaning given that term in section 831(f)(1).

''(6) RADIOACTIVE MATERIAL.—The term 'radioactive material' means—

''(A) source material and special nuclear material, but does not include natural or depleted uranium;

''(B) nuclear by-product material;

''(C) material made radioactive by bombardment in an accelerator; or

''(D) all refined isotopes of radium.

''(7) SOURCE MATERIAL.—The term 'source material' has the meaning given that term in section 11(z) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(z)).

''(8) SPECIAL NUCLEAR MATERIAL.—The term 'special nuclear material' has the meaning given that term in section 11(aa) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(aa)).

**''§ 2284. Transportation of terrorists**

''(a) IN GENERAL.—Any person who knowingly and willfully transports any terrorist aboard any vessel within the United States, on the high seas, or having United States nationality, knowing that the transported person is a terrorist, shall be fined under this title, imprisoned for any term of years or for life, or both.

''(b) DEFINED TERM.—In this section, the term 'terrorist' means any person who intends to commit, or is avoiding apprehension after having committed, an offense listed under section 2332b(g)(5)(B).''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 111 of title 18, United States Code, as amended by this Act, is amended by adding at the end the following:

''2283. Transportation of explosive, biological, chemical, or radioactive or nuclear materials.

''2284. Transportation of terrorists.''.

**SEC. ___16. DESTRUCTION OR INTERFERENCE WITH VESSELS OR MARITIME FACILITIES.**

(a) IN GENERAL.—Part 1 of title 18, United States Code, is amended by inserting after chapter 111 the following:

**''CHAPTER 111A—DESTRUCTION OF, OR INTERFERENCE WITH, VESSELS OR MARITIME FACILITIES**

''Sec.

''2290. Jurisdiction and scope.

''2291. Destruction of vessel or maritime facility.

''2292. Imparting or conveying false information.

''2293. Bar to prosecution.

**''§ 2290. Jurisdiction and scope**

''(a) JURISDICTION.—There is jurisdiction over an offense under this chapter if the prohibited activity takes place—

''(1) within the United States or within waters subject to the jurisdiction of the United States; or

''(2) outside United States and—

''(A) an offender or a victim is a national of the United States (as that term is defined under section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

''(B) the activity involves a vessel in which a national of the United States was on board; or

''(C) the activity involves a vessel of the United States (as that term is defined under section 2(c) of the Maritime Drug Law Enforcement Act (42 App. U.S.C. 1903(c)).

''(b) SCOPE.—Nothing in this chapter shall apply to otherwise lawful activities carried out by or at the direction of the United States Government.

**''§ 2291. Destruction of vessel or maritime facility**

''(a) OFFENSE.—Whoever willfully—

''(1) sets fire to, damages, destroys, disables, or wrecks any vessel;

''(2) places or causes to be placed a destructive device, as defined in section 921(a)(4), or

destructive substance, as defined in section 13, in, upon, or in proximity to, or otherwise makes or causes to be made unworkable or unusable or hazardous to work or use, any vessel, or any part or other materials used or intended to be used in connection with the operation of a vessel;

''(3) sets fire to, damages, destroys, or disables or places a destructive device or substance in, upon, or in proximity to, any maritime facility, including but not limited to, any aid to navigation, lock, canal, or vessel traffic service facility or equipment, or interferes by force or violence with the operation of such facility, if such action is likely to endanger the safety of any vessel in navigation;

''(4) sets fire to, damages, destroys, or disables or places a destructive device or substance in, upon, or in proximity to, any appliance, structure, property, machine, or apparatus, or any facility or other material used, or intended to be used, in connection with the operation, maintenance, loading, unloading, or storage of any vessel or any passenger or cargo carried or intended to be carried on any vessel;

''(5) performs an act of violence against or incapacitates any individual on any vessel, if such act of violence or incapacitation is likely to endanger the safety of the vessel or those on board;

''(6) performs an act of violence against a person that causes or is likely to cause serious bodily injury, as defined in section 1365, in, upon, or in proximity to, any appliance, structure, property, machine, or apparatus, or any facility or other material used, or intended to be used, in connection with the operation, maintenance, loading, unloading, or storage of any vessel or any passenger or cargo carried or intended to be carried on any vessel;

''(7) communicates information, knowing the information to be false and under circumstances in which such information may reasonably be believed, thereby endangering the safety of any vessel in navigation; or

''(8) attempts or conspires to do anything prohibited under paragraphs (1) through (7):

shall be fined under this title or imprisoned not more than 20 years, or both.

''(b) LIMITATION.—Subsection (a) shall not apply to any person that is engaging in otherwise lawful activity, such as normal repair and salvage activities, and the lawful transportation of hazardous materials.

''(c) PENALTY.—Whoever is fined or imprisoned under subsection (a) as a result of an act involving a vessel that, at the time of the violation, carried high-level radioactive waste (as that term is defined in section 2(12) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(12)) or spent nuclear fuel (as that term is defined in section 2(23) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(23)), shall be fined under title 18, imprisoned for a term up to life, or both.

''(d) PENALTY WHEN DEATH RESULTS.—Whoever is convicted of any crime prohibited by subsection (a), which has resulted in the death of any person, shall be subject also to the death penalty or to imprisonment for life.

''(e) THREATS.—Whoever willfully imparts or conveys any threat to do an act which would violate this chapter, with an apparent determination and will to carry the threat into execution, shall be fined under this title, imprisoned not more than 5 years, or both, and is liable for all costs incurred as a result of such threat.

**''§ 2292. Imparting or conveying false information**

''(a) IN GENERAL.—Whoever imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a crime prohibited by this chapter or by chapter 111 of this title, shall be subject to a civil penalty of not more than $5,000, which shall be recoverable in a civil action brought in the name of the United States.

''(b) MALICIOUS CONDUCT.—Whoever willfully and maliciously, or with reckless disregard for the safety of human life, imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt to do any act which would be a crime prohibited by this chapter or by chapter 111 of this title, shall be fined under this title, imprisoned not more than 5 years, or both.

''(c) JURISDICTION.—

''(1) IN GENERAL.—Except as provided under paragraph (2), section 2290(a) shall not apply to any offense under this section.

''(2) JURISDICTION.—Jurisdiction over an offense under this section shall be determined in accordance with the provisions applicable to the crime prohibited by this chapter, or by chapter 2, 97, or 111 of this title, to which the imparted or conveyed false information relates, as applicable.

**''§ 2293. Bar to prosecution**

''(a) IN GENERAL.—It is a bar to prosecution under this chapter if—

''(1) the conduct in question occurred within the United States in relation to a labor dispute, and such conduct is prohibited as a felony under the law of the State in which it was committed; or

''(2) such conduct is prohibited as a misdemeanor under the law of the State in which it was committed.

''(b) DEFINITIONS.—In this section:

''(1) LABOR DISPUTE.—The term 'labor dispute' has the same meaning given that term in section 113(c) of the Norris-LaGuardia Act (29 U.S.C. 113(c)).

''(2) STATE.—The term 'State' means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters at the beginning of title 18, United States Code, is amended by inserting after the item for chapter 111 the following:

''111A. Destruction of, or interference with, vessels or maritime facilities ..... 2290''.

**SEC. ___17. THEFT OF INTERSTATE OR FOREIGN SHIPMENTS OR VESSELS.**

(a) THEFT OF INTERSTATE OR FOREIGN SHIPMENTS.—Section 659 of title 18, United States Code, is amended—

(1) in the first undesignated paragraph—

(A) by inserting ''trailer,'' after ''motortruck,'';

(B) by inserting ''air cargo container,'' after ''aircraft,''; and

(C) by inserting '', or from any intermodal container, trailer, container freight station, warehouse, or freight consolidation facility,'' after ''air navigation facility'';

(2) in the fifth undesignated paragraph, by striking ''one year'' and inserting ''3 years''; and

(3) by inserting after the first sentence in the eighth undesignated paragraph the following: ''For purposes of this section, goods and chattel shall be construed to be moving as an interstate or foreign shipment at all points between the point of origin and the final destination (as evidenced by the waybill or other shipping document of the shipment), regardless of any temporary stop while awaiting transhipment or otherwise.''.

(b) STOLEN VESSELS.—

(1) IN GENERAL.—Section 2311 of title 18, United States Code, is amended by adding at the end the following:

'' 'Vessel' means any watercraft or other contrivance used or designed for transportation or navigation on, under, or immediately above, water.''.

(2) TRANSPORTATION AND SALE OF STOLEN VESSELS.—Sections 2312 and 2313 of title 18, United States Code, are each amended by striking ''motor vehicle or aircraft'' and inserting ''motor vehicle, vessel, or aircraft''.

(c) REVIEW OF SENTENCING GUIDELINES.—Pursuant to section 994 of title 28, United States Code, the United States Sentencing Commission shall review the Federal Sentencing Guidelines to determine whether sentencing enhancement is appropriate for any offense under section 659 or 2311 of title 18, United States Code, as amended by this Act.

(d) ANNUAL REPORT OF LAW ENFORCEMENT ACTIVITIES.—The Attorney General shall annually submit to Congress a report, which shall include an evaluation of law enforcement activities relating to the investigation and prosecution of offenses under section 659 of title 18, United States Code, as amended by this Act.

(e) REPORTING OF CARGO THEFT.—The Attorney General shall take the steps necessary to ensure that reports of cargo theft collected by Federal, State, and local officials are reflected as a separate category in the Uniform Crime Reporting System, or any successor system, by no later than December 31, 2005.

**SEC. ___18. INCREASED PENALTIES FOR NONCOMPLIANCE WITH MANIFEST REQUIREMENTS.**

(a) REPORTING, ENTRY, CLEARANCE REQUIREMENTS.—Section 436(b) of the Tariff Act of 1930 (19 U.S.C. 1436(b)) is amended by—

(1) striking ''or aircraft pilot'' and inserting '', aircraft pilot, operator, owner of such vessel, vehicle or aircraft or any other responsible party (including non-vessel operating common carriers)'';

(2) striking ''$5,000'' and inserting ''$10,000''; and

(3) striking ''$10,000'' and inserting ''$25,000''.

(b) CRIMINAL PENALTY.—Section 436(c) of the Tariff Act of 1930 (19 U.S.C. 1436(c)) is amended by striking ''$2,000'' and inserting ''$10,000''.

(c) FALSITY OR LACK OF MANIFEST.—Section 584(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1584(a)(1)) is amended by striking ''$1,000'' in each place it occurs and inserting ''$10,000''.

**SEC. ___19. STOWAWAYS ON VESSELS OR AIRCRAFT.**

Section 2199 of title 18, United States Code, is amended by striking ''Shall be fined under this title or imprisoned not more than one year, or both.'' and inserting the following:

''(1) shall be fined under this title, imprisoned not more than 5 years, or both;

''(2) if the person commits an act proscribed by this section, with the intent to commit serious bodily injury, and serious bodily injury occurs (as defined under section 1365, including any conduct that, if the conduct occurred in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242) to any person other than a participant as a result of a violation of this section, shall be fined under this title, imprisoned not more than 20 years, or both; and

''(3) if an individual commits an act proscribed by this section, with the intent to cause death, and if the death of any person other than a participant occurs as a result of a violation of this section, shall be fined under this title, imprisoned for any number of years or for life, or both.''.

**SEC. ___20. BRIBERY AFFECTING PORT SECURITY.**

(a) IN GENERAL.—Chapter 11 of title 18, United States Code, is amended by adding at the end the following:

**''§ 226. Bribery affecting port security**

''(a) IN GENERAL.—Whoever knowingly—

''(1) directly or indirectly, corruptly gives, offers, or promises anything of value to any public or private person, with intent—

''(A) to commit international or domestic terrorism (as that term is defined under section 2331);

''(B) to influence any action or any person to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud affecting any secure or restricted area or seaport; or

''(C) to induce any official or person to do or omit to do any act in violation of the fiduciary duty of such official or person which affects any secure or restricted area or seaport; or

''(2) directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity in return for—

''(A) being influenced in the performance of any official act affecting any secure or restricted area or seaport; and

''(B) knowing that such influence will be used to commit, or plan to commit, international or domestic terrorism;

shall be fined under this title, imprisoned not more than 15 years, or both.

''(b) DEFINITION.—In this section, the term 'secure or restricted area' has the meaning given that term in section 2285(c).''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 11 of title 18, United States Code, is amended by adding at the end the following:

''226. Bribery affecting port security.''.

## AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

Ms. COLLINS. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on September 29, 2004, at 10 a.m., to conduct a hearing on ''The 9/11 Commission and Efforts to Identify and Combat Terrorist Financing.''

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

COMMITTEE ON FOREIGN RELATIONS

Ms. COLLINS. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, September 29, 2004, at 3 p.m., to hold a hearing on Nominations.

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

COMMITTEE ON INDIAN AFFAIRS

Ms. COLLINS. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, September 29, 2004, at 9:30 a.m. in room 216 of the Hart Senate Office Building to conduct a business meeting on pending Committee matters, to be followed immediately by an oversight hearing on Lobbying Practices Involving Indian Tribes regarding allegations of misconduct associated with lobbying and related activities.

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

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

Ms. COLLINS. Mr. President, I ask unanimous consent that the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Wednesday, September 29 at 2:30 p.m.

The purpose of the hearing is to receive testimony on the following bills: S. 2378, to provide for the conveyance of certain public land in Clark County, NV, for use as a heliport; S. 2410, to promote wildland firefighter safety; H.R. 1651, to provide for the exchange of land within the Sierra National Forest, California, and for other purposes; H.R. 2400, to amend the Organic Act of Guam for the purposes of clarifying the local judicial structure of Guam; H.R. 3874, to convey for public purposes certain Federal lands in Riverside County, CA, that have been identified for disposal; H.R. 4170, to authorize the Secretary of the Interior to recruit volunteers to assist with, or facilitate, the activities of various agencies and offices of the Department of the Interior; and Senate Resolution 387, a resolution commemorating the 40th anniversary of the Wilderness Act.

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

SUBCOMMITTEE ON SCIENCE, TECHNOLOGY, AND SPACE

Ms. COLLINS. Mr. President, I ask unanimous consent that the Subcommittee on Science, Technology, and Space be authorized to meet on September 29, 2004, at 2 pm, on Embryonic Stem Cell Research: Exploring the Controversy.

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

## PRIVILEGES OF THE FLOOR

Ms. COLLINS. Mr. President, I ask unanimous consent that Claude Berube, a legislative fellow in my office, be granted the privileges of the floor during the debate on S. 2845, the intelligence reform bill.

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

Mr. DEWINE. Mr. President, I ask unanimous consent that Jack Livingston, a fellow on the Intelligence Committee staff, be granted floor privileges during the pendency of this bill.

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

Mr. HARKIN. Mr. President, I ask unanimous consent that privilege of the floor be granted to Sarah Helgen during consideration of this legislation.

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

Mr. INOUYE. Mr. President, I ask unanimous consent that privilege of the floor be granted to Kate Kaufer, a detailee with the Defense Appropriations Subcommittee, during consideration of this legislation.

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

Ms. COLLINS. Mr. President, I ask unanimous consent that John Shuhart, a detailee of the Governmental Affairs Committee, be accorded the privilege of the floor for the duration of the debate on S. 2845.

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

Ms. COLLINS. Mr. President, on behalf of Senator DOLE, I ask unanimous consent that John Ulrich, a military fellow in her office, be granted floor privileges during the consideration of the intelligence reform bill.

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

Mr. SESSIONS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

## UNANIMOUS-CONSENT AGREEMENT

Mr. SESSIONS. Mr. President, I ask unanimous consent that all first-degree amendments from the limited list to the pending legislation be filed at the desk no later than 4 p.m., Thursday, September 30; provided further that it be in order for the sponsor of any amendment to modify the filed amendment with consent of their respective leader.

The PRESIDING OFFICER. Is there objection?

The Democratic whip.

Mr. REID. I want to make sure the record reflects that a large number of Senators on both sides of the aisle filed relevant amendments. We want to make sure those amendments are allowed to be offered in keeping with the order that was previously entered in this matter that states all amendments be related to the subject matter of the bill. So ''related'' should do the trick.

Mr. SESSIONS. Mr. President, insofar as that is the agreement, and I understand it is, the Senator is correct.

Mr. REID. If the Senator will yield for just a brief comment, if Senators have already filed their amendments, do not do it again. All it does is confuse the staff. If Senators have filed the amendments, do not file them again. If there is some question, come and talk to the staff before sending over more amendments.

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

## SENATE LEGAL COUNSEL AUTHORIZATION

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 443, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 443) to authorize testimony, document production, and legal representation in United States versus Roberto Martin.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, this resolution concerns a request for testimony, documents, and representation in a criminal action pending in Florida Federal District Court. In this action, the defendant is charged with impersonating an agent of the Central Intelligence Agency, conspiracy to impersonate a CIA agent, possession of a firearm after a felony conviction, and mail fraud. The indictment alleges that the defendant unjustly enriched himself by obtaining money from third parties upon the false representation that he was working with the CIA on a secret operation to obtain funds allegedly stolen from Cuban leader Fidel Castro. According to the prosecution, in furtherance of the alleged fraud, the defendant or his co-conspirators provided to third parties a fictitious letter purportedly signed by Senator GRAHAM.

The defendant's trial is scheduled to commence on or about November 1, 2004. The prosecution has requested testimony and the production of documents from a member of the Senator's staff who has evidence relevant to the charged offenses. Senator GRAHAM wishes to cooperate with the prosecution's request. Accordingly, the enclosed resolution authorizes that staff member, and any other employees of Senator GRAHAM's office from whom evidence may be required, to testify and produce documents in this action. The enclosed resolution also authorizes representation by the Senate legal counsel of Senator GRAHAM's staff in this action.

Mr. SESSIONS. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to this matter be printed in the RECORD.

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

The resolution (S. Res. 443) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 443

Whereas, in the case of United States v. Roberto Martin, Crim. No. 04–CR–20075, pending in federal district court in the Southern District of Florida, testimony and documents have been requested from an employee in the office of Senator Bob Graham;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(2), the Senate may direct its counsel to represent employees of the Senate with respect to any subpoena, order, or request for testimony relating to their official responsibilities;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate may, by the judicial or administrative process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate may promote the administration of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

*Resolved*, That employees of Senator Graham's office from whom testimony or the production of documents may be required are authorized to testify and produce documents in the case of United States v. Roberto Martin, except concerning matters for which a privilege should be asserted.

SEC. 2. The Senate Legal Counsel is authorized to represent Senator Graham's staff in the action referenced in section one of this resolution.

## MEASURES PLACED ON THE CALENDAR—S. 2852, H.R. 1084, AND H.R. 1787

Mr. SESSIONS. Mr. President, I understand there are three bills at the desk and due for a second reading. I ask unanimous consent that the clerk read the titles of the bills for a second time, en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will read the bills by title for the second time.

The legislative clerk read as follows:

A bill (S. 2852) to provide assistance to Special Olympics to support expansion of Special Olympics and development of education programs and a Healthy Athletes Program, and for other purposes.

A bill (H.R. 1084) to provide liability protection to nonprofit volunteer pilot organizations flying for public benefit and to the pilots and staff of such organizations.

A bill (H.R. 1787) to remove civil liability barriers that discourage the donation of fire equipment to volunteer fire companies.

Mr. SESSIONS. I would object to any further consideration, en bloc.

The PRESIDING OFFICER. The objection is heard. The bills will be placed on the calendar.

## MEASURE READ THE FIRST TIME—S. 2866

Mr. SESSIONS. Mr. President, I understand there is a bill at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the bill by title for the first time.

The legislative clerk read as follows:

A bill (S. 2866) to amend the Farm Security and Rural Investment Act of 2002 to clarify the authority of the Secretary of Agriculture and the Commodity Credit Corporation to enter into memorandums of understanding with a State regarding the collection of approved State commodity assessments on behalf of the State from the proceeds of marketing assistance loans.

Mr. SESSIONS. I now ask for its second reading and, in order to place the bill on the calendar under the provisions of rule XIV, object to further proceedings on this matter.

The PRESIDING OFFICER. The bill will be read for the second time on the next legislative day.

## TAX TREATMENT OF BONDS AND OTHER OBLIGATIONS ISSUED BY THE GOVERNMENT OF AMERICAN SAMOA

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 655, H.R. 982.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 982) to clarify the tax treatment of bonds and other obligations issued by the Government of American Samoa.

There being no objection, the Senate proceeded to consider the bill.

Mr. SESSIONS. I ask unanimous consent the bill be read a third time and passed, the motion to reconsider be laid upon the table, and any statements be printed in the RECORD.

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

The bill (H.R. 982) was read the third time and passed.

## REAUTHORIZATION OF THE CONGRESSIONAL AWARD ACT

Mr. SESSIONS. I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 693, S. 2639, the Congressional Award Act Reauthorization bill.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2639) to reauthorize the Congressional Award Act.

There being no objection, the Senate proceeded to consider the bill.

Mr. SESSIONS. I ask unanimous consent the Craig amendment, which is at the desk, be agreed to, the bill as amended be read a third time and passed, the motion to reconsider be laid upon the table, and that any statement relating to the bill be printed in the RECORD.

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

The amendment (No. 3784) was agreed to, as follows:

(Purpose: To clarify acceptance of Federal funds and resources)

After section 1, insert the following:

**SEC. 2. FEDERAL FUNDS AND RESOURCES.**

(a) TECHNICAL AMENDMENTS; CLARIFICATION OF ACCEPTANCE OF FEDERAL FUNDS AND RESOURCES.—Section 106 of the Congressional Award Act (2 U.S.C. 806) is amended—

(1) in subsection (a)(1), by striking ''from sources other than the Federal Government'';

(2) in the heading of subsection (e), by striking ''NON-FEDERAL FUNDS AND RESOURCES; INDIRECT RESOURCES'' and inserting ''FUNDS AND RESOURCES'';

(3) in subsection (e)—

(A) in paragraph (1), by striking ''Subject to the provisions of paragraph (2), the'' and inserting ''The''; and

(B) by striking paragraph (2) and inserting the following:

''(2) The Board—

''(A) may benefit from in-kind and indirect resources provided by Offices of Members of Congress;

''(B) is not prohibited from receiving benefits from efforts or activities undertaken in

collaboration with entities which receive Federal funds or resources; and

''(C) may not accept more than one-half of all funds accepted from Federal sources.''; and

(4) adding at the end the following:

''(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Board to carry out this Act $750,000 for each of fiscal years 2005, 2006, 2007, 2008, and 2009.''.

The bill (S. 2639), as amended, was read the third time and passed, as follows:

S. 2639

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. REAUTHORIZATION OF THE CONGRESSIONAL AWARD ACT.**

(a) EXTENSION OF REQUIREMENTS REGARDING FINANCIAL OPERATIONS OF CONGRESSIONAL AWARD PROGRAM; NONCOMPLIANCE WITH REQUIREMENTS.—Section 104(c)(2)(A) of the Congressional Award Act (2 U.S.C. 804(c)(2)(A)) is amended by striking ''and 2004'' and inserting ''2004, 2005, 2006, 2007, 2008, and 2009''.

(b) TERMINATION.—Section 108 of the Congressional Award Act (2 U.S.C. 808) is amended by striking ''October 1, 2004'' and inserting ''October 1, 2009''.

(c) TECHNICAL AMENDMENTS.—The Congressional Award Act is amended—

(1) in section 103(b)(3)(B) (2 U.S.C. 803(b)(3)(B)), by striking ''section'' each place it appears and inserting ''subsection''; and

(2) in section 104(c)(2)(A) (2 U.S.C. 804(c)(2)(A)), by inserting a comma after ''1993''.

**SEC. 2. FEDERAL FUNDS AND RESOURCES.**

(a) TECHNICAL AMENDMENTS; CLARIFICATION OF ACCEPTANCE OF FEDERAL FUNDS AND RESOURCES.—Section 106 of the Congressional Award Act (2 U.S.C. 806) is amended—

(1) in subsection (a)(1), by striking ''from sources other than the Federal Government'';

(2) in the heading of subsection (e), by striking ''NON-FEDERAL FUNDS AND RESOURCES; INDIRECT RESOURCES'' and inserting ''FUNDS AND RESOURCES'';

(3) in subsection (e)—

(A) in paragraph (1), by striking ''Subject to the provisions of paragraph (2), the'' and inserting ''The''; and

(B) by striking paragraph (2) and inserting the following:

''(2) The Board—

''(A) may benefit from in-kind and indirect resources provided by Offices of Members of Congress;

''(B) is not prohibited from receiving benefits from efforts or activities undertaken in collaboration with entities which receive Federal funds or resources; and

''(C) may not accept more than one-half of all funds accepted from Federal sources.''; and

(4) adding at the end the following:

''(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Board to carry out this Act $750,000 for each of fiscal years 2005, 2006, 2007, 2008, and 2009.''.

## DEPARTMENT OF HOMELAND SECURITY FINANCIAL ACCOUNTABILITY ACT

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Governmental Affairs Committee be discharged from further consideration of H.R. 4259, and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 4259) to amend title 31, United States Code, to improve the financial accountability requirements applicable to the Department of Homeland Security, to establish requirements for the Future Years Homeland Security Program of the Department, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

HOMELAND SECURITY STRATEGY

Mr. LIEBERMAN. Mr. President, I rise to call attention to a critical piece of this legislation—the requirement in section 5 of H.R. 4259, the Department of Homeland Security Financial Accountability Act, for an annual homeland security strategy.

Before 9/11, we did not truly perceive the threat of terrorism on our own soil, and what homeland security efforts we did have underway were badly divided. Dozens of agencies responsible for pieces of our homeland security were scattered across the Federal Government, and were largely unconnected to State and local officials and first responders on the front lines in our nation's cities and towns. There were overlaps and, more critically, treacherous gaps. And because everyone was responsible for parts of the effort, no one was ultimately in charge.

We took one large step to remedy these weaknesses by creating the Department of Homeland Security, DHS. The Department brings more than two dozen of the Federal Government's critical homeland security agencies and programs under one roof, allowing for unprecedented coordination and cooperation. It also created a Cabinet Secretary charged with managing the budget and personnel of these agencies, and capable of providing a focal point for homeland programs and issues in the Cabinet and beyond.

But we knew that in addition to creating a better organization we would need to lay out a clear roadmap to galvanize our homeland defenses—at all levels of Government and the private sector. That is what many of us called for and, regretfully, it is something this Nation still sorely lacks.

The administration did produce a ''National Strategy for Homeland Security'' in July 2002 that correctly identified many of the challenges we face in preparing to meet the threat of terrorism. But that document predates the creation of the Department of Homeland Security and is already badly out of date.

More significantly, as the highly regarded Gilmore Commission on terrorism noted in its final report last December:

> Much is still required in order to achieve an effective, comprehensive, unified national strategy and to translate vision into action. Notably, absent is a clear prioritization for the use of scarce resources against a diffuse, unclear threat as part of the spectrum of threats—some significantly more common than terrorism. The panel has serious concerns about the current state of homeland security efforts along the full spectrum from awareness to recovery and is worried that efforts by the government may provide the perception of enhanced security that causes the nation to become complacent about the many critical actions still required.

It is true that the Department of Homeland Security is proceeding with some more targeted strategic regarding specific areas of concern, but these cannot replace a comprehensive strategy that sets the ultimate policies and priorities for our homeland effort.

That is why I am pleased that the legislation before us calls upon the administration to develop and update its homeland security strategy in connection with its budgeting process for the Department of Homeland Security. More specifically, the legislation requires that the Secretary for Homeland Security:

> . . . set forth the homeland security strategy of the department, which shall be developed and updated as appropriate annually . . .

and explain how that strategy relates to the Department's planned budgeting.

As it does so, the administration should adhere to the guiding principles laid out in the February 3, 2004 report by the General Accounting Office, GAO, now referred to as the Government Accountability Office, regarding the Nation's various strategies related to terrorism and homeland security. In that report, the GAO surveyed 7 existing Federal strategies related to terrorism—including the National Strategy for Homeland Security—and laid out guiding principles to improve these strategies. These principles stress accountability and prioritization as requirements for a sound strategy. The new strategy must employ risk assessment and analysis to help prioritize strategic goals, then indicate the specific activities needed to achieve those goals, as well as the likely costs and how such funds should be generated. In other words, the strategy must make real choices about priorities and resources. The current strategy identifies many goals, but rarely provides real deadlines for action, standards or performance measures to assess progress, or details on the resources required for stated initiatives.

The strategy should clearly spell out organizational roles and responsibilities, including the proper roles of State, local, private and international actors and the coordinating mechanisms to bring these actors together. Almost 3 years after 9/11, we still too often must ask ''who is in charge?'' of key pieces of our homeland security agenda. And, critically, the homeland security strategy must address how it relates to other Federal strategies regarding terrorist threats, and how the strategies will be integrated.

Such a strategy must also provide more leadership on critical components of our homeland effort, such as a thoroughgoing strategy to maximize information sharing related to homeland security throughout the Federal Government and with state and local officials

and, where appropriate, the private sector. The strategy must look at preparing the public health sector to detect and respond to terrorist attacks, at integrating military capabilities into our homeland security planning, at building emergency preparedness throughout all levels of Government and the private sector, and securing our critical infrastructure, much of which is in private hands.

While the Department of Homeland Security is central to our effort to protect the homeland, many critical components of the homeland security effort nonetheless lie outside the Department. An effective strategy must address all key homeland security programs, and should involve the cooperation of the Homeland Security Council and the President's Special Assistant for Homeland Security to assist the Secretary in gathering appropriate input from throughout the Federal government.

The Department of Homeland Security has made important strides in improving our homeland defenses. But in the face of ongoing threats of terrorist attacks on our homeland, we cannot afford anything less than our best effort. Today, we still lack strong direction on critical aspects of our homeland security effort. A new and more forceful national strategy will energize and organize our resources—at all levels of Government and within the private sector—to better meet the threats ahead.

Ms. COLLINS. Mr. President, I thank my colleague for his comments on this important issue, and rise to add my own remarks on the critical importance of building a strong homeland security strategy. As members of the Governmental Affairs Committee labored over legislation to create the Department of Homeland Security, we became well acquainted with the daunting array of programs and policies that are part of our homeland security effort. In creating the Department, and through efforts we have undertaken since that time, the committee has worked to help supply the Department of Homeland Security with the tools it will need to be successful. Our oversight work has demonstrated the need to have a strong national strategy to guide our homeland efforts. I agree with my colleague that GAO and others have identified ways in which our homeland security strategy could be strengthened and updated. This legislation will facilitate improvements by requiring that the administration lay out its homeland security strategy anew, and coordinate this strategy with its annual budget requests. This should bring out strategic vision into sharper view, and ensure that adequate resources are sought and secured to carry out homeland priorities.

FINANCIAL ACCOUNTABILITY

Mr. BINGAMAN. Mr. President, I would like to express my support for passage of H.R. 4259, the Department of Homeland Security Financial Accountability Act. This Act will apply the Chief Financial Officers Act of 1990 to the Department of Homeland Security, and will codify the existence of an Office of Program Analysis and Evaluation within the Department. This latter provision, which was not part of the Senate-passed companion bill, S. 1567, is an important one, and I would like to engage in a colloquy with the chair and ranking member of the Committee on Governmental Affairs to clarify what is and is not intended by this provision.

The Department of Homeland Security is charged with carrying out a wide range of activities related to our domestic security. In my view, it is probably the executive department with the broadest range of activities that need to be coordinated and reconciled from a programmatic standpoint. It is crucial that the Department have a robust programmatic coordination function at the highest level, and that this function have, at its base, a strong analytical capability for purposes of setting priorities among the disparate parts of the Department for purposes of budget formulation and execution. For this reason, the statutory creation of an Office of Program Analysis and Evaluation, and the mandate that it report no lower in the organization than directly to the new chief financial officer, is very sound.

There is another related function in the Department of Homeland Security that has been given a different placement by statute. That is the function of test and evaluation for developing homeland security priorities and for assessing specific technologies. Under section 302 of the Homeland Security Act of 2002, the Under Secretary for Science and Technology within the Department of Homeland Security was given statutory missions for, among other things, ''assessing and testing homeland security vulnerabilities and possible threats,'' ''testing and evaluation activities that are relevant to any or all elements of the Department'' and ''coordinating and integrating all research, development, testing, and evaluation activities of the Department.'' It is crucial that these testing and evaluation functions remain under the management of the Under Secretary for Science and Technology, because they need strong scientific management and focus. We cannot afford to spend constrained Federal funds for homeland security on approaches or technologies that are not technically sound, or that are not cost-effective compared to other technologies.

I do not believe that there is an inherent conflict between the new statutory office created by this bill and the existing statutory assignments in the Homeland Security Act. Offices like the proposed Office of Program Analysis and Evaluation exist in several executive departments, and are generally more focused on assessing programmatic directions, outcomes, resources, and priorities. The test and evaluation function, in contrast, focuses more specifically on technical issues and relative technical merits. In the Department of Defense, for example, both functions are in distinct organizations that work together where appropriate to complement the different strengths and missions that each brings to the table. It would be my assumption that this is the outcome that Congress wants to see in the case of the Department of Homeland Security.

With this as background, I would like to ascertain from my colleagues, the chair and ranking member of the Committee on Governmental Affairs, if they agree with my understanding that the statutory creation of the new Office of Program Analysis and Evaluation is not meant to supersede or alter the testing and evaluation function that Congress has previously assigned to the Under Secretary of Homeland Security for Science and Technology.

Ms. COLLINS. The Senator is correct.

Mr. LIEBERMAN. The Senator is correct.

Mr. BINGAMAN. I thank my colleagues.

Mr. SESSIONS. I ask unanimous consent the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 4259) was read the third time and passed.

## CONGRATULATING AND COMMENDING THE VETERANS OF FOREIGN WARS OF THE UNITED STATES AND ITS NATIONAL COMMANDER-IN-CHIEF, JOHN FURGESS OF TENNESSEE

Mr. SESSIONS. I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 444, which was submitted earlier today by Senator FRIST.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 444) congratulating and commending the Veterans of Foreign Wars of the United States and its National Commander-in-Chief, John Furgess of Tennessee.

There being no objection, the Senate proceeded to consider the resolution.

Mr. SESSIONS. I ask unanimous consent the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to this matter be printed in the RECORD.

Mr. REID. I ask the Senator from Nevada, Mr. REID, be added as a cosponsor.

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

The resolution (S. Res. 444) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 444

Whereas the organization now known as the Veterans of Foreign Wars of the United States (''VFW'') was founded in Columbus, Ohio, on September 29, 1899;

Whereas the VFW represents approximately 2,000,000 veterans of the Armed Forces who served overseas in World War I, World War II, Korea, Vietnam, the Persian Gulf War, Bosnia, Iraq, and Afghanistan; and

Whereas the VFW has, for the past 105 years, provided voluntary and unselfish service to the Armed Forces and to veterans, communities, States, and the United States, and has worked toward the betterment of veterans in general and society as a whole: Now, therefore, be it

*Resolved*, That the Senate—

(1) recognizes the historic significance of the 105th anniversary of the founding of the Veterans of Foreign Wars of the United States (''VFW'');

(2) congratulates the VFW on achieving that milestone;

(3) commends the approximately 2,000,000 veterans who belong to the VFW and thanks them for their service to their fellow veterans and the United States; and

(4) recognizes the VFW's national Commander-in-Chief, John Furgess, for his service and dedication to the veterans of the United States.

## BINDING ARBITRATION FOR SALT RIVER PIMA-MARICOPA INDIAN RESERVATION CONTRACTS

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Senate now proceed to the immediate consideration of Calendar No. 652, H.R. 4115.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 4115) to amend the Act of November 2, 1966 (80 Stat. 1112), to allow binding arbitration clauses be included in all contracts affecting the land within the Salt River Pima-Maricopa Indian Reservation.

There being no objection, the Senate proceeded to consider the bill.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 4115) was read the third time and passed.

## INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION ACT OF 2003

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 438, S. 1601.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1601) to amend the Indian Child Protection and Family Violence Prevention Act to provide for the reporting and reduction of child abuse and family violence incidences on Indian reservations, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Indian Affairs, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

(Strike the part shown in black brackets and insert the part shown in italic.)

S. 1601

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**[SECTION 1. SHORT TITLE.**

[This Act may be cited as the ''Indian Child Protection and Family Violence Prevention Reauthorization Act of 2003''.

**[SEC. 2. FINDINGS AND PURPOSE.**

[Section 402 of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3201) is amended—

[(1) in subsection (a)—

[(A) by striking paragraph (1) and inserting the following:

[''(1) finds that—

[''(A) Indian children are the most precious resource of Indian tribes and need special protection by the United States;

[''(B) the number of reported incidences of child abuse on Indian reservations continues to rise at an alarming rate, but the reduction of such incidences is hindered by the lack of—

[''(i) community awareness in identification and reporting methods;

[''(ii) interagency coordination for reporting, investigating, and prosecuting; and

[''(iii) tribal infrastructure for managing, preventing, and treating child abuse cases;

[''(C) improvements are needed to combat the continuing child abuse on Indian reservations, including—

[''(i) education to identify symptoms consistent with child abuse;

[''(ii) extensive background investigations of Federal and tribal employees, volunteers, and contractors who care for, teach, or otherwise have regular contact with Indian children;

[''(iii) strategies to ensure the safety of child protection workers; and

[''(iv) support systems for the victims of child abuse and their families; and

[''(D) funds spent by the United States on Indian reservations for the benefit of Indian victims of child abuse or family violence are inadequate to combat child abuse and to meet the growing needs for mental health treatment and counseling for those victims and their families.'';

[(B) in paragraph (2)—

[(i) by striking ''two'' and inserting ''the'';

[(ii) in subparagraph (B)—

[(I) by inserting after ''provide funds for'' the following: ''developing a comprehensive tribal child abuse and family violence program including training and technical assistance for identifying, addressing, and decreasing such incidents and for''; and

[(II) by striking the period at the end and inserting a semicolon; and

[(iii) by adding at the end the following:

[''(C) implement strategies to increase the safety of child protection workers;

[''(D) assist tribes in developing the necessary infrastructure to combat and reduce child abuse on Indian reservations; and

[''(E) identify and remove impediments to the prevention and reduction of child abuse on Indian reservations, including elimination of existing barriers, such as difficulties in sharing information among agencies and differences between the values and treatment protocols of the different agencies.''; and

[(2) in subsection (b)—

[(A) in paragraph (1), by striking ''prevent further abuse'' and inserting ''prevent and prosecute child abuse'';

[(B) in paragraph (2), by striking ''authorize a study to determine the need for a central registry for reported incidents of abuse'' and inserting ''build tribal infrastructure needed to maintain and coordinate databases'';

[(C) by striking paragraph (3);

[(D) by redesignating paragraphs (4), (5), (6), and (7) as paragraphs (3), (4), (5), and (6), respectively;

[(E) in paragraph (3) (as redesignated by subparagraph (D)), by striking ''sexual'';

[(F) in paragraph (5) (as redesignated by subparagraph (D)), by striking ''Area'' and inserting ''Regional'';

[(G) in paragraph (6) (as redesignated by subparagraph (D))—

[(i) by inserting ''child abuse and'' after ''incidents of''; and

[(ii) by inserting ''through tribally-operated programs'' after ''family violence'';

[(H) by inserting after paragraph (6) (as redesignated by subparagraph (D)) the following:

[''(7) conduct a study to identify the impediments to effective prevention, investigation, prosecution, and treatment of child abuse;''; and

[(I) by striking paragraph (8) and inserting the following:

[''(8) develop strategies to protect the safety of the child protection workers while performing responsibilities under this title; and''.

**[SEC. 3. DEFINITIONS.**

[Section 403(3) of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3202(3)) is amended—

[(1) in subparagraph (A), by striking ''and'' at the end;

[(2) in subparagraph (B), by adding ''and'' at the end; and

[(3) by adding at the end the following:

[''(C) any case in which a child is subjected to family violence;''.

**[SEC. 4. REPORTING PROCEDURES.**

[Section 404(b) of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3203(b)) is amended by adding at the end the following:

[''(3) COOPERATIVE REPORTING.—If—

[''(A) a report of abuse or family violence involves an alleged abuser who is a non-Indian; and

[''(B) a preliminary inquiry indicates a criminal violation has occurred;

the local law enforcement agency (if other than the State law enforcement agency) shall immediately report the occurrence to the State law enforcement agency.''.

**[SEC. 5. CENTRAL REGISTRY.**

[The Indian Child Protection and Family Violence Prevention Act is amended by striking section 405 (25 U.S.C. 3204) and inserting the following:

**["SEC. 405. BARRIERS TO IMPLEMENTATION.**

[''(a) IN GENERAL.—The Secretary, in consultation with the Secretary of Health and Human Services and the Attorney General, shall conduct a study to identify impediments to the reduction of child abuse on Indian reservations.

[''(b) MATTERS TO BE EVALUATED.—In conducting the study under subsection (a), the Secretary shall, at a minimum, evaluate the interagency and intergovernmental cooperation and jurisdictional impediments in investigations and prosecutions.

[''(c) REPORT.—

[''(1) IN GENERAL.—Not later than 180 days after the date of enactment of this paragraph, the Secretary shall submit to Congress a report that describes the results of the study under subsection (a).

[''(2) CONTENTS.—The report under paragraph (1) shall include—

[''(A) any findings made in the study;

[''(B) recommendations on ways to eliminate impediments described in subsection (a); and

[''(C) cost estimates for implementing the recommendations.''.

**[SEC. 6. CHARACTER INVESTIGATIONS.**

[Section 408 of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3207) is amended—

[(1) in subsection (a)—

[(A) in paragraph (1), by inserting ''(including contracted and volunteer positions),'' after ''authorized positions''; and

[(B) in paragraph (3), by striking the period at the end and inserting the following: '', which—

[''(A) shall include a background check, based on a set of fingerprints of the employee, volunteer or contractor that may be conducted through the Federal Bureau of Investigation; and

[''(B) may include a review of applicable State criminal history repositories.''; and

[(2) in subsection (c)—

[(A) in paragraph (1), by inserting after ''who is'' the following: ''a volunteer or contractor or is''; and

[(B) in paragraph (2), by striking ''employ'' and inserting ''contract with, accept, or employ''.

**[SEC. 7. INDIAN CHILD ABUSE TREATMENT GRANT PROGRAM.**

[Section 409 of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3208) is amended—

[(1) in subsection (a), by striking ''sexual'';

[(2) by redesignating subsection (e) as subsection (f);

[(3) by inserting after subsection (d) the following:

[''(e) DEMONSTRATION PROJECT.—

[''(1) IN GENERAL.—The Secretary of Health and Human Services shall establish demonstration projects to facilitate the development of a culturally-sensitive traditional healing treatment program for child abuse and family violence to be operated by an Indian tribe, tribal organization, or inter-tribal consortium.

[''(2) APPLICATION.—

[''(A) IN GENERAL.—An Indian tribe, tribal organization, or inter-tribal consortium may submit an application to participate in a demonstration project in such form as the Secretary of Health and Human Services may prescribe.

[''(B) CONTENTS.—As part of an application under subparagraph (A), the Secretary of Health and Human Services shall require—

[''(i) the information described in subsection (b)(2)(C);

[''(ii) a proposal for development of educational materials and resources, to the extent culturally appropriate; and

[''(iii) proposed strategies to use and maintain the integrity of traditional healing methods.

[''(3) CONSIDERATIONS.—In selecting the participants in demonstration projects established under this subsection, the Secretary of Health and Human Services shall give special consideration to projects relating to behavioral and emotional effects of child abuse, elimination of abuse by parents, and reunification of the family.''; and

[(4) in subsection (f) (as redesignated by paragraph (2))—

[(A) by striking ''there'' and inserting ''There''; and

[(B) by striking ''$10,000,000 for each of the years 1992, 1993, 1994, 1995, 1996 and 1997'' and inserting ''such sums as are necessary to carry out this section for each of fiscal years 2005 through 2010, of which a specific sum shall be specifically set aside each year for the demonstration projects established under subsection (e).''.

**[SEC. 8. INDIAN CHILD RESOURCE AND FAMILY SERVICES CENTERS.**

[Section 410 of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3209) is amended—

[(1) in subsection (a) by striking ''area'' and inserting ''Regional'';

[(2) in subsection (b)—

[(A) by striking ''Secretary and'' and inserting ''Secretary,''; and

[(B) by striking ''Services'' and inserting ''Services, and the Attorney General'';

[(3) in subsection (d)(5), by striking ''area'' and inserting ''Region'';

[(4) in subsection (f)—

[(A) in the second sentence, by striking ''an area'' and inserting ''a Regional''; and

[(B) in the last sentence, by inserting ''developing strategies,'' after ''Center in'';

[(5) in the second sentence of subsection (g)—

[(A) by striking ''an area'' and inserting ''a Regional''; and

[(B) by striking ''Juneau Area'' and inserting ''Alaska Region''; and

[(6) in subsection (h), by striking ''$3,000,000 for each of the fiscal years 1992, 1993, 1994, 1995, 1996 and 1997'' and inserting ''such sums as are necessary to carry out this section for each of fiscal years 2005 through 2010''.

**[SEC. 9. INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION PROGRAM.**

[Section 411 of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3210) is amended—

[(1) in subsection (c)—

[(A) in paragraph (1), by inserting ''coordination, reporting and'' before ''investigation'';

[(B) in paragraph (2) by inserting ''child abuse and'' after ''incidents of'';

[(2) in subsection (d)—

[(A) in paragraph (1)(C), by inserting ''and other related items'' after ''equipment''; and

[(B) in paragraph (3)—

[(i) in subparagraph (B), by striking '', and'' at the end and inserting a semicolon;

[(ii) in subparagraph (C), by inserting after ''responsibilities'' the following: ''and specify appropriate measures for ensuring child protection worker safety while performing responsibilities under this title''; and

[(iii) by adding at the end the following:

[''(D) provide for training programs or expenses for child protection services personnel, law enforcement personnel or judicial personnel to meet any certification requirements necessary to fulfill the responsibilities under any intergovernmental or interagency agreement; and

[''(E) develop and implement strategies designed to ensure the safety of child protection workers while performing responsibilities under this Act;'';

[(3) in paragraph (6), by striking ''and'' at the end;

[(4) by redesignating paragraph (7) as paragraph (8);

[(5) by inserting after paragraph (6) the following:

[''(7) infrastructure enhancements to improve tribal data systems to monitor the progress of families, evaluate service and treatment outcomes, and determine the most effective approaches and activities; and''

[(6) by redesignating subsections (f), (g), (h), and (i) as paragraphs (e), (f), (g), and (h), respectively;

[(7) in paragraph (1) of subsection (g) (as redesignated by paragraph (6)), by striking subparagraph (A) and inserting the following:

[''(A) evaluate the program for which the award is made, including examination of—

[''(i) the range and scope of training opportunities, including numbers and percentage of child protection workers engaged in the training programs;

[''(ii) the threats to child protection workers, if any, and the strategies used to address the safety of child protection workers; and

[''(iii) the community outreach and awareness programs including any strategies to increase the ability of the community to contact appropriate reporting officials regarding occurrences of child abuse.''; and

[(8) in subsection (h) (as redesignated by paragraph (6)), by striking ''$30,000,000 for each of fiscal years 1992, 1993, 1994, 1995, 1996 and 1997'' and inserting ''such sums as are necessary to carry out this section for each of fiscal years 2005 through 2010.''.]

***SECTION 1. SHORT TITLE.***

*This Act may be cited as the ''Indian Child Protection and Family Violence Prevention Reauthorization Act of 2004''.*

***SEC. 2. FINDINGS AND PURPOSE.***

*Section 402 of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3201) is amended—*

*(1) in subsection (a)—*

*(A) by striking paragraph (1) and inserting the following:*

*''(1) finds that—*

*''(A) Indian children are the most precious resource of Indian tribes and need special protection by the United States;*

*''(B) the number of reported incidences of child abuse on Indian reservations continues to rise at an alarming rate, but the reduction of such incidences is hindered by the lack of—*

*''(i) community awareness in identification and reporting methods;*

*''(ii) interagency coordination for reporting, investigating, and prosecuting; and*

*''(iii) tribal infrastructure for managing, preventing, and treating child abuse cases;*

*''(C) improvements are needed to combat the continuing child abuse on Indian reservations, including—*

*''(i) education to identify symptoms consistent with child abuse;*

*''(ii) extensive background investigations of Federal and tribal employees, volunteers, and contractors who care for, teach, or otherwise have regular contact with Indian children;*

*''(iii) strategies to ensure the safety of child protection workers; and*

*''(iv) support systems for the victims of child abuse and their families; and*

*''(D) funds spent by the United States on Indian reservations for the benefit of Indian victims of child abuse or family violence are inadequate to combat child abuse and to meet the growing needs for mental health treatment and counseling for those victims and their families.'';*

*(B) in paragraph (2)—*

*(i) by striking ''two'' and inserting ''the'';*

*(ii) in subparagraph (B)—*

*(I) by inserting after ''provide funds for'' the following: ''developing a comprehensive tribal child abuse and family violence program including training and technical assistance for identifying, addressing, and decreasing such incidents and for''; and*

*(II) by striking the period at the end and inserting a semicolon; and*

*(iii) by adding at the end the following:*

*''(C) implement strategies to increase the safety of child protection workers;*

*''(D) assist tribes in developing the necessary infrastructure to combat and reduce child abuse on Indian reservations; and*

*''(E) identify and remove impediments to the prevention and reduction of child abuse on Indian reservations, including elimination of existing barriers, such as difficulties in sharing information among agencies and differences between the values and treatment protocols of the different agencies.''; and*

(2) in subsection (b)—

(A) in paragraph (1), by striking ''prevent further abuse'' and inserting ''prevent and prosecute child abuse'';

(B) in paragraph (2), by striking ''authorize a study to determine the need for a central registry for reported incidents of abuse'' and inserting ''build tribal infrastructure needed to maintain and coordinate databases'';

(C) by striking paragraph (3);

(D) by redesignating paragraphs (4), (5), (6), and (7) as paragraphs (3), (4), (5), and (6), respectively;

(E) in paragraph (3) (as redesignated by subparagraph (D)), by striking ''sexual'';

(F) in paragraph (5) (as redesignated by subparagraph (D)), by striking ''Area'' and inserting ''Regional'';

(G) in paragraph (6) (as redesignated by subparagraph (D))—

(i) by inserting ''child abuse and'' after ''incidents of''; and

(ii) by inserting ''through tribally-operated programs'' after ''family violence'';

(H) by inserting after paragraph (6) (as redesignated by subparagraph (D)) the following:

''(7) conduct a study to identify the impediments to effective prevention, investigation, prosecution, and treatment of child abuse;''; and

(I) by striking paragraph (8) and inserting the following:

''(8) develop strategies to protect the safety of the child protection workers while performing responsibilities under this title; and''.

**SEC. 3. DEFINITIONS.**

Section 403(3) of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3202(3)) is amended—

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

(2) in subparagraph (B), by adding ''and'' at the end; and

(3) by adding at the end the following:

''(C) any case in which a child is exposed to family violence;''.

**SEC. 4. REPORTING PROCEDURES.**

Section 404(b) of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3203(b)) is amended by adding at the end the following:

''(3) COOPERATIVE REPORTING.—If—

''(A) a report of abuse or family violence involves an alleged abuser who is a non-Indian; and

''(B) a preliminary inquiry indicates a criminal violation has occurred;

the local law enforcement agency (if other than the State law enforcement agency) shall immediately report the occurrence to the State law enforcement agency.''.

**SEC. 5. BARRIERS TO REDUCING CHILD ABUSE.**

The Indian Child Protection and Family Violence Prevention Act is amended by striking section 405 (25 U.S.C. 3204) and inserting the following:

**''SEC. 405. BARRIERS TO REDUCING CHILD ABUSE.**

''(a) IN GENERAL.—The Secretary, in consultation with the Secretary of Health and Human Services and the Attorney General, shall conduct a study to identify impediments to the reduction of child abuse on Indian reservations.

''(b) MATTERS TO BE EVALUATED.—In conducting the study under subsection (a), the Secretary shall, at a minimum, evaluate the interagency and intergovernmental cooperation and jurisdictional impediments in investigations and prosecutions.

''(c) REPORT.—

''(1) IN GENERAL.—Not later than 18 months after the date of enactment of this paragraph, the Secretary shall submit to Congress a report that describes the results of the study under subsection (a).

''(2) CONTENTS.—The report under paragraph (1) shall include—

''(A) any findings made in the study;

''(B) any recommendations that the Secretary considers appropriate on ways to eliminate impediments described in subsection (a); and

''(C) cost estimates for implementing the recommendations.''.

**SEC. 6. CHARACTER INVESTIGATIONS.**

Section 408 of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3207) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by inserting ''(including contracted and volunteer positions),'' after ''authorized positions''; and

(B) in paragraph (3), by striking the period at the end and inserting the following: '', which—

''(A) shall include a background check, based on a set of fingerprints of the employee, volunteer or contractor that may be conducted through the Federal Bureau of Investigation; and

''(B) may include a review of applicable State and tribal criminal history repositories.''; and

(2) in subsection (c)—

(A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and indenting appropriately;

(B) by striking ''Each'' and inserting the following:

''(1) IN GENERAL.—Each'';

(C) in subparagraph (A) (as redesignated by subparagraph (A)), by inserting after ''who is'' the following: ''a volunteer or contractor or is'';

(D) in subparagraph (B) (as redesignated by subparagraph (A)), by striking ''employ'' and inserting ''contract with, accept, or employ''; and

(E) by adding at the end the following:

''(2) SATISFACTION OF REQUIREMENTS.—

''(A) INVESTIGATIONS.—An investigation conducted under paragraph (1)(A) shall be considered to satisfy any requirement under any other Federal law for a background check in connection with the placement of an Indian child in a foster or adoptive home, or an institution.

''(B) LICENSING OR APPROVAL.—On certification by an Indian tribe that the Indian tribe is in compliance with paragraph (1), the licensing or approval of guardianships, foster or adoptive homes, or institutions by an Indian tribe in accordance with tribal law shall be considered to be equivalent to licensing or approval by a State for the purposes of any law that authorizes placement in or provides funding for guardianships, foster or adoptive homes, or institutions.''.

**SEC. 7. INDIAN CHILD ABUSE TREATMENT GRANT PROGRAM.**

Section 409 of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3208) is amended—

(1) in subsection (a), by striking ''sexual'';

(2) by redesignating subsection (e) as subsection (f);

(3) by inserting after subsection (d) the following:

''(e) DEMONSTRATION PROJECT.—

''(1) IN GENERAL.—The Secretary of Health and Human Services shall establish demonstration projects to facilitate the development of a culturally-sensitive traditional healing treatment program for child abuse and family violence to be operated by an Indian tribe, tribal organization, or inter-tribal consortium.

''(2) APPLICATION.—

''(A) IN GENERAL.—An Indian tribe, tribal organization, or inter-tribal consortium may submit an application to participate in a demonstration project in such form as the Secretary of Health and Human Services may prescribe.

''(B) CONTENTS.—As part of an application under subparagraph (A), the Secretary of Health and Human Services shall require—

''(i) the information described in subsection (b)(2)(C);

''(ii) a proposal for development of educational materials and resources, to the extent culturally appropriate; and

''(iii) proposed strategies to use and maintain the integrity of traditional healing methods.

''(3) CONSIDERATIONS.—In selecting the participants in demonstration projects established under this subsection, the Secretary of Health and Human Services shall give special consideration to projects relating to behavioral and emotional effects of child abuse, elimination of abuse by parents, and reunification of the family.''; and

(4) in subsection (f) (as redesignated by paragraph (2))—

(A) by striking ''there'' and inserting ''There''; and

(B) by striking ''$10,000,000 for each of the years 1992, 1993, 1994, 1995, 1996 and 1997'' and inserting ''such sums as are necessary to carry out this section for each of fiscal years 2005 through 2010, of which a specific sum shall be specifically set aside each year for the demonstration projects established under subsection (e).''.

**SEC. 8. INDIAN CHILD RESOURCE AND FAMILY SERVICES CENTERS.**

Section 410 of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3209) is amended—

(1) in subsection (a) by striking ''area'' and inserting ''Regional'';

(2) in subsection (b)—

(A) by striking ''Secretary and'' and inserting ''Secretary,''; and

(B) by striking ''Services'' and inserting ''Services, and the Attorney General'';

(3) in subsection (d)(5), by striking ''area'' and inserting ''Region'';

(4) in subsection (f)—

(A) in the second sentence, by striking ''an area'' and inserting ''a Regional''; and

(B) in the last sentence, by inserting ''developing strategies,'' after ''Center in'';

(5) in the second sentence of subsection (g)—

(A) by striking ''an area'' and inserting ''a Regional''; and

(B) by striking ''Juneau Area'' and inserting ''Alaska Region''; and

(6) in subsection (h), by striking ''$3,000,000 for each of the fiscal years 1992, 1993, 1994, 1995, 1996 and 1997'' and inserting ''such sums as are necessary to carry out this section for each of fiscal years 2005 through 2010''.

**SEC. 9. INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION PROGRAM.**

Section 411 of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3210) is amended—

(1) in subsection (c)—

(A) in paragraph (1), by inserting ''coordination, reporting and'' before ''investigation'';

(B) in paragraph (2) by inserting ''child abuse and'' after ''incidents of'';

(2) in subsection (d)—

(A) in paragraph (1)(C), by inserting ''and other related items'' after ''equipment''; and

(B) in paragraph (3)—

(i) in subparagraph (B), by striking '', and'' at the end and inserting a semicolon;

(ii) in subparagraph (C), by inserting after ''responsibilities'' the following: ''and specify appropriate measures for ensuring child protection worker safety while performing responsibilities under this title''; and

(iii) by adding at the end the following:

''(D) provide for training programs or expenses for child protection services personnel, law enforcement personnel or judicial personnel to meet any certification requirements necessary to fulfill the responsibilities under any intergovernmental or interagency agreement; and

''(E) develop and implement strategies designed to ensure the safety of child protection workers while performing responsibilities under this Act;'';

(3) in paragraph (6), by striking ''and'' at the end;

(4) by redesignating paragraph (7) as paragraph (8);

*(5) by inserting after paragraph (6) the following:*

*''(7) infrastructure enhancements to improve tribal data systems to monitor the progress of families, evaluate service and treatment outcomes, and determine the most effective approaches and activities; and''*

*(6) by redesignating subsections (f), (g), (h), and (i) as paragraphs (e), (f), (g), and (h), respectively;*

*(7) in paragraph (1) of subsection (g) (as redesignated by paragraph (6)), by striking subparagraph (A) and inserting the following:*

*''(A) evaluate the program for which the award is made, including examination of—*

*''(i) the range and scope of training opportunities, including numbers and percentage of child protection workers engaged in the training programs;*

*''(ii) the threats to child protection workers, if any, and the strategies used to address the safety of child protection workers; and*

*''(iii) the community outreach and awareness programs including any strategies to increase the ability of the community to contact appropriate reporting officials regarding occurrences of child abuse.''; and*

*(8) in subsection (h) (as redesignated by paragraph (6)), by striking ''$30,000,000 for each of fiscal years 1992, 1993, 1994, 1995, 1996 and 1997'' and inserting ''such sums as are necessary to carry out this section for each of fiscal years 2005 through 2010.''.*

***SEC. 10. INTEGRATION OF SERVICES.***

*The Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3201 et seq.) is amended by adding at the end the following:*

***''SEC. 412. INTEGRATION OF SERVICES.***

*''(a) DEMONSTRATION PROJECT.—In cooperation with the Secretary of Health and Human Services and Attorney General, the Secretary shall, on the receipt of a plan acceptable to the Secretary that is submitted by an Indian tribe, tribal organization, or inter-tribal consortium, authorize the Indian tribe, tribal organization, or inter-tribal consortium to carry out a demonstration project to coordinate, in accordance with the plan, its federally funded child abuse-related service programs in a manner that integrates the program services into a single coordinated, comprehensive program that reduces administrative costs by consolidating administrative functions.*

*''(b) INTEGRATION OF PROGRAMS.—*

*''(1) IN GENERAL.—Subject to paragraph (2), an Indian tribe, tribal organization, or inter-tribal consortium may integrate any program under which the Indian tribe, tribal organization, or inter-tribal consortium is eligible for receipt of funds under a statutory or administrative formula, competitive grant, or any other funding scheme for the purposes of addressing child abuse.*

*''(2) COMPETITIVE GRANT PROGRAMS.—In the case of a competitive grant program, the consent of the funding agency shall be required for integration of the program under paragraph (1).*

*''(c) PLAN REQUIREMENTS.—A plan under subsection (a) shall—*

*''(1) identify the programs to be integrated;*

*''(2) be consistent with the purposes of this Act;*

*''(3) describe a comprehensive strategy that identifies the full range of existing and potential child abuse and family violence prevention, treatment, and service programs available on or near the service area of the Indian tribe;*

*''(4) describe the manner in which services are to be integrated and delivered and the results expected from the plan;*

*''(5) identify the projected expenditures under the plan in a single budget;*

*''(6) identify the agency or agencies of the tribal government to be involved in the delivery of the services integrated under the plan;*

*''(7) identify any statutory provisions, regulations, policies, or procedures that the tribal government believes need to be waived in order to implement its plan; and*

*''(8) be approved by the governing body of the affected Indian tribe or tribes.*

*''(d) OTHER FEDERAL AGENCIES.—*

*''(1) CONSULTATION.—On receipt of the plan from an Indian tribe, tribal organization, or inter-tribal consortium, the Secretary shall consult with—*

*''(A) the head of each Federal agency providing funds to be used to implement the plan; and*

*''(B) the Indian tribe, tribal organization, or inter-tribal consortium.*

*''(2) WAIVER.—Notwithstanding any other provision of law, the Attorney General or appropriate Secretary shall waive any regulation, policy, or procedure promulgated by the agency identified in the plan, unless the waiver would be inconsistent with this Act or any statutory requirement applicable to the program to be integrated under the plan that is specifically applicable to Indian programs.*

*''(e) APPROVAL OR DISAPPROVAL.—*

*''(1) NOTICE.—Not later than 90 days after receipt of the plan, the Secretary shall notify the Indian tribe, tribal organization, or inter-tribal consortium, in writing, of the approval or disapproval of the plan.*

*''(2) DISAPPROVAL.—If the plan is disapproved—*

*''(A) the notice under paragraph (1) shall inform the Indian tribe, tribal organization, or inter-tribal consortium of the reasons for the disapproval; and*

*''(B) the Indian tribe, tribal organization, or inter-tribal consortium shall be given an opportunity to amend the plan or petition the Secretary to reconsider the disapproval.*

*''(f) RESPONSIBILITIES OF THE DEPARTMENT OF THE INTERIOR.—*

*''(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary, the Secretary of Health and Human Services, and the Attorney General shall enter into a memorandum of agreement providing for the implementation of demonstration projects under this section.*

*''(2) COORDINATING AGENCY.—The coordinating agency in carrying out this section shall be the Bureau of Indian Affairs.*

*''(3) RESPONSIBILITIES.—*

*''(A) IN GENERAL.—The responsibilities of the coordinating agency shall include—*

*''(i) the development of a single report format which shall be used by the tribe, tribal organization, or inter-tribal consortium to report on all the plan activities and expenditures;*

*''(ii) the development of a single system of Federal oversight of demonstration projects, which shall be implemented by the coordinating agency; and*

*''(iii) the provision of, or arrangement for, technical assistance to an Indian tribe, tribal organization, or inter-tribal consortium.*

*''(B) REQUIREMENTS.—The report form developed under subparagraph (A)(i) shall require disclosure of such information as the Secretary determines will—*

*''(i) allow a determination that the Indian tribe, tribal organization, or inter-tribal consortium has complied with the requirements incorporated in the approved plan of the Indian tribe; and*

*''(ii) provide assurances to each funding agency that the Indian tribe, tribal organization, or inter-tribal consortium has complied with all applicable statutory requirements that have not been waived.*

*''(g) NO REDUCTION.—In no case shall the amount of Federal funds made available to any tribal government conducting a demonstration project be reduced by reason of the conduct of the demonstration project.*

*''(h) TRANSFER OF FUNDS.—The Secretary, Secretary of Health and Human Services, or Attorney General, as appropriate, may take such action as is necessary to provide for an inter-agency transfer of funds otherwise available to an Indian tribe, tribal organization, or inter-tribal consortium to carry out this section immediately upon the request of the Indian tribe, tribal organization, or inter-tribal consortium.*

*''(i) ADMINISTRATION OF FUNDS.—*

*''(1) IN GENERAL.—The funds of programs that are integrated under this section shall be administered in such a manner as to allow for a determination that funds from specific programs (or an amount equal to the amount attracted from each program) are spent on allowable activities authorized under the program.*

*''(2) SEPARATE RECORDS NOT REQUIRED.—Nothing in this section requires an Indian tribe, tribal organization, or inter-tribal consortium to—*

*''(A) maintain separate records tracing any services or activities conducted under an approved plan to the individual programs under which funds were authorized; or*

*''(B) allocate expenditures among individual programs.*

*''(3) ADMINISTRATIVE COSTS.—*

*''(A) COMMINGLING.—All administrative costs under an approved plan may be commingled.*

*''(B) ENTITLEMENT TO FULL AMOUNT.—An Indian tribe, tribal organization, or inter-tribal consortium shall be entitled to the full amount of funding of administrative costs in accordance with regulations applicable to each program.*

*''(C) EXCESS FUNDS.—Any excess of funds available to pay administrative costs, shall not be counted for Federal audit purposes, if the funds are used for the purposes provided for under this title.*

*''(j) FISCAL ACCOUNTABILITY.—Nothing in this section diminishes the duty of the Secretary to fulfill the responsibility of safeguarding Federal funds in accordance with chapter 75 of title 31, United States Code.*

*''(k) REPORT ON STATUTORY OBSTACLES TO PROGRAM INTEGRATION.—*

*''(1) PRELIMINARY REPORT.—Not later than 3 years after the date of enactment of this section, the Secretary shall submit to Congress a preliminary report on the status of the implementation of the demonstration program under this section.*

*''(2) FINAL REPORT.—Not later than 6 years after the date of enactment of this section, the Secretary shall submit to Congress a report that—*

*''(A) describes the results of the implementation of this section; and*

*''(B) identifies statutory barriers to more effective integration of program services in a manner consistent with this section.''.*

***SEC. 11. TRIBAL PARTNERSHIPS FOR AWARENESS AND RESPONSES.***

*(a) IN GENERAL.—Section 2001 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg) is amended by adding at the end the following:*

*''(d) TRIBAL COALITION GRANTS.—*

*''(1) PURPOSE.—The Attorney General shall award grants to tribal domestic violence and sexual assault coalitions for purposes of—*

*''(A) increasing awareness of domestic violence and sexual assault against Indian women;*

*''(B) enhancing the response to violence against Indian women at the Federal, State, and tribal levels; and*

*''(C) identifying and providing technical assistance to coalition membership and tribal communities to enhance access to essential services to Indian women victimized by domestic and sexual violence.*

*''(2) GRANTS TO TRIBAL COALITIONS.—The Attorney General shall award grants under paragraph (1) to—*

*''(A) established nonprofit, nongovernmental tribal coalitions that address domestic violence and sexual assault against Indian women; and*

*''(B) individuals or organizations that propose to incorporate as nonprofit, nongovernmental tribal coalitions to address domestic violence and sexual assault against Indian women.*

*''(3) ELIGIBILITY FOR OTHER GRANTS.—Receipt of an award under this subsection by a tribal domestic violence and sexual assault coalition shall not preclude the coalition from receiving additional grants under this title to carry out the purposes described in subsection (b).''.*

*(b) FUNDING.—Section 2007(b) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg–1(b)) is amended by striking paragraph (4) and inserting the following:*

*''(4) 1/54 shall be available for grants under section 2001(d);''.*

Mr. SESSIONS. Mr. President, I ask unanimous consent that the committee-reported substitute be agreed to, the bill, as amended, be read the third time and passed, the motion to reconsider be laid upon the table, en bloc, and any statements relating to the bill be printed in the RECORD.

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

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 1601), as amended, was passed.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

## MAKING CONTINUING APPROPRIATIONS FOR THE FISCAL YEAR 2005

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of H.J. Res. 107, the continuing resolution which is at the desk; provided that the joint resolution be read the third time and passed, and the motion to reconsider be laid upon the table.

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

The joint resolution (H.J. Res. 107) was read the third time and passed.

## REAUTHORIZING NATIVE AMERICAN PROGRAMS ACT OF 1974

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar No. 634, S. 2436.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2436) to reauthorize the Native American Programs Act of 1974.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Indian Affairs with amendments, as follows:

[Strike the parts shown in black brackets and insert the parts shown in italic.]

S. 2436

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. NATIVE AMERICAN PROGRAMS ACT OF 1974.**

*(a) INTRA-DEPARTMENTAL COUNCIL ON NATIVE AMERICAN AFFAIRS.—Section 803B(d)(1) of the Native American Programs Act of 1974 (42 U.S.C. 2991b–2(d)(1)) is amended by striking ''There'' and all that follows and inserting the following: ''There is established in the Office of the Secretary the Intra-Departmental Council on Native American Affairs. The Commissioner and the Director of the Indian Health Service shall serve as co-chairpersons of the Council. The co-chairpersons shall advise the Secretary on all matters affecting Native Americans that involve the Department.''.*

[(a) IN GENERAL.—] *(b) AUTHORIZATION OF APPROPRIATIONS.*—Section 816 of the Native American Programs Act of 1974 (42 U.S.C. 2992d) is amended—

(1) by striking subsections (a) through (c) and inserting the following:

''(a) IN GENERAL.—There are authorized to be appropriated—

''(1) to carry out section 803(d), $8,000,000 for each of fiscal years 2005 through 2009; and

''(2) to carry out provisions of this title other than section 803(d) and any other provision having an express authorization of appropriations, such sums as are necessary for each of fiscal years 2005 through 2009.

''(b) LIMITATION.—Not less than 90 percent of the funds made available to carry out this title for a fiscal year (other than funds made available to carry out sections 803(d), 803A, 803C, and 804, and any other provision of this title having an express authorization of appropriations) shall be expended to carry out section 803(a).'';

(2) by redesignating subsection (d) as subsection (c); and

(3) by striking subsection (e).

[(b)] *(c)* REPORTS.—Section 811A of the Native American Programs Act of 1974 (42 U.S.C. 2992–1) is amended—

(1) by striking the section heading and all that follows through ''each year,'' and inserting the following:

**''SEC. 811A. REPORTS.**

''Every 5 years, the Secretary shall''; and

(2) by striking ''an annual report'' and inserting ''a report''.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the committee-reported amendments be considered and agreed to. I understand Senator INOUYE has an amendment at the desk, and I ask unanimous consent that the amendment be considered and agreed to; the bill, as amended, be read the third time and passed, the motion to reconsider be laid upon the table without intervening action or debate, and any statements relating thereto be printed in the RECORD.

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

The committee amendments were agreed to.

The amendment (No. 3783) was agreed to, as follows:

(Purpose: To authorize research and educational activities relating to Native Hawaiian law)

At the end, add the following:

**SEC. 2. RESEARCH AND EDUCATIONAL ACTIVITIES.**

Section 7205(a)(3) of the Native Hawaiian Education Act (20 U.S.C. 7515(a)(3)) is amended—

(1) by redesignating subparagraphs (K) and (L) as subparagraphs (L) and (M), respectively; and

(2) by inserting after subparagraph (J) the following:

''(K) research and educational activities relating to Native Hawaiian law;''.

The bill (S. 2436), as amended, was read the third time and passed, as follows:

S. 2436

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. NATIVE AMERICAN PROGRAMS ACT OF 1974.**

(a) INTRA-DEPARTMENTAL COUNCIL ON NATIVE AMERICAN AFFAIRS.—Section 803B(d)(1) of the Native American Programs Act of 1974 (42 U.S.C. 2991b–2(d)(1)) is amended by striking ''There'' and all that follows and inserting the following: ''There is established in the Office of the Secretary the Intra-Departmental Council on Native American Affairs. The Commissioner and the Director of the Indian Health Service shall serve as co-chairpersons of the Council. The co-chairpersons shall advise the Secretary on all matters affecting Native Americans that involve the Department.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 816 of the Native American Programs Act of 1974 (42 U.S.C. 2992d) is amended—

(1) by striking subsections (a) through (c) and inserting the following:

''(a) IN GENERAL.—There are authorized to be appropriated—

''(1) to carry out section 803(d), $8,000,000 for each of fiscal years 2005 through 2009; and

''(2) to carry out provisions of this title other than section 803(d) and any other provision having an express authorization of appropriations, such sums as are necessary for each of fiscal years 2005 through 2009.

''(b) LIMITATION.—Not less than 90 percent of the funds made available to carry out this title for a fiscal year (other than funds made available to carry out sections 803(d), 803A, 803C, and 804, and any other provision of this title having an express authorization of appropriations) shall be expended to carry out section 803(a).'';

(2) by redesignating subsection (d) as subsection (c); and

(3) by striking subsection (e).

(c) REPORTS.—Section 811A of the Native American Programs Act of 1974 (42 U.S.C. 2992–1) is amended—

(1) by striking the section heading and all that follows through ''each year,'' and inserting the following:

**''SEC. 811A. REPORTS.**

''Every 5 years, the Secretary shall''; and

(2) by striking ''an annual report'' and inserting ''a report''.

**SEC. 2. RESEARCH AND EDUCATIONAL ACTIVITIES.**

Section 7205(a)(3) of the Native Hawaiian Education Act (20 U.S.C. 7515(a)(3)) is amended—

(1) by redesignating subparagraphs (K) and (L) as subparagraphs (L) and (M), respectively; and

(2) by inserting after subparagraph (J) the following:

''(K) research and educational activities relating to Native Hawaiian law;''.

## ORDERS FOR THURSDAY, SEPTEMBER 30, 2004

Mr. SESSIONS. Mr. President, I ask unanimous consent that when the Senate adjourns today, it adjourn until 9:30 a.m. on Thursday, September 30; I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time

for the two leaders be reserved, and the Senate then resume consideration of S. 2845, the intelligence reform bill; provided that upon conclusion of the debate on the pending Warner amendment, Senator GRAHAM of Florida be recognized to offer the next amendment.

Mr. REID. Mr. President, I have spoken to the necessary parties. I ask that this request be modified to allow Senator BYRD to speak for up to 20 minutes following the first vote we have tomorrow.

The PRESIDING OFFICER. Does the Senator accept the modification?

Mr. SESSIONS. We have no objection.

Mr. REID. I have no objection to the request of the Senator from Alabama.

The PRESIDING OFFICER. Without objection, the request is modified as agreed to.

## PROGRAM

Mr. SESSIONS. For the information of all Senators, tomorrow the Senate will resume consideration of the intelligence reform bill. We had good debate on the bill today, disposing of several amendments. In addition, we were able to lock in a final list of amendments and a filing deadline for tomorrow, as well, so that Members will be able to view actual legislative text for each amendment.

For the remainder of the day tomorrow we will continue working through amendments to the bill. The chairman and ranking member will be here to receive amendments. Again, we will complete action on the bill prior to adjourning. Senators who wish to offer amendments are encouraged to work with the managers to get their amendments pending. Senators should expect rollcall votes throughout the day.

I observe that when the Senate passed fiscal year 2005 Defense appropriations conference report, we adopted discretionary spending levels for all fiscal year 2005 appropriations of $821.9 billion. Unfortunately, the continuing resolution, H.J. Res. 107, authorized an annualized spending level of more than $840 billion because section 103 of the resolution allows billions in 2004 supplemental appropriations to continue into a new fiscal year. It is my understanding the House of Representatives will shortly pass a bill to correct this problem and eliminate funding in the CR for any one-time 2004 spending items. It also is my understanding that the majority leader and Chairman STEVENS will seek to have the Senate consider that correction whenever it becomes available. I believe it is essential we comply with the spending limits we previously adopted, and I look forward to working with my colleagues to ensure that we do.

## ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. SESSIONS. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:36 p.m., adjourned until Thursday, September 30, 2004, at 9:30 a.m.