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Senate

The Senate met at 2 p.m. and was called to order by the Honorable LAMAR ALEXANDER, a Senator from the State of Tennessee.

PRAYER

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

Let us pray. Eternal Spirit, who brings a rich harvest with Your footsteps, mountains melt in Your presence. You are robed with honor and majesty. We praise Your name and celebrate Your goodness. Remind us that without Your help, there is no national security. May we focus less on what we can accomplish and more on Your unstoppable providence. Send Your peace into the hearts of our Senators. Take away distracting worries and fill them with faith. Cleanse them from any bitter or unforgiving spirit as You give them contentment in serving You and this great Nation. Inspire them with the courage to work to build a world without dividing walls. We pray in Your holy name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable LAMAR ALEXANDER 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.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, November 14, 2005.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable LAMAR ALEXANDER, a Senator from the State of Tennessee, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. ALEXANDER thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Today we will be returning to the Defense authorization bill. I think this is our sixth day on the bill. We spent 5 or 6 days on it several months ago. Under the consent agreement from last Thursday, we will debate the final amendments to the Defense authorization bill today and then tomorrow morning we will have a series of votes on the remaining amendments, concluding with a vote on final passage of that bill. Those amendments include two amendments relating to our policies in Iraq and second-degree amendments to the Graham amendments on the status of detainees. We will start those votes at about 10:45 tomorrow morning, and therefore we will finish the Defense authorization bill prior to our normal recess that we take on Tuesdays for our respective policy lunches.

I also want to remind my colleagues that at 4:30 today, we will begin an hour of debate on the Energy and Water appropriations conference report. This will be our sixth conference report. We have done Homeland Security, Interior, Agriculture, Legislative Branch, and then Foreign Operations. This will be No. 6 as we continue to bring these bills across the floor one by one.

We will have a vote at about 5:30 today, after an hour of debate on Energy and Water appropriations. In addition to those two matters, we have a whole host of other important issues to address prior to adjourning for Thanksgiving.

The most common question I get is on the schedule and what time we will be getting out for Thanksgiving and, of course, the holidays in December as well. In the short term, this week we may consider tax reconciliation under the statutory time limitation as provided by the Budget Act. The Budget Act provides for up to 20 hours of debate on that bill, and therefore we could have late nights during this week in order to finish that tax bill. We have five remaining appropriations conference reports, and we will consider them over the course of the week as they become available. We have Defense, Labor-HHS, MILCON, the Transportation-HUD bill, and DC appropriations.

As I mentioned, we will finish the Energy and Water conference report today, and we are ready to lock in a short time agreement on the Commerce, Justice, and Science conference report, which is now at the desk.

Following that one—today we will do six—we will have done seven of the appropriations conference reports. I expect the remainder to become available over the course of the week. As they become available, we will set aside time and have, hopefully, very tight time agreements and deal with them accordingly.

In addition to the DOD authorization bill and the conference reports, we have other things to address this week. On the conference report on the PATRIOT Act, which is expected this week, there has been a lot of work done over the course of the last 2 weeks and over the course of the weekend. We will complete that prior to our Thanksgiving time away as well.

Another item that we have worked on a lot over the last 5 or 6 weeks that

will be back on the floor is pension legislation. We are very close to an agreement on that. We will be able to do that before Thanksgiving, as well, if we continue to make the progress that we have made over the last 2 weeks. We are hoping to reach a unanimous consent agreement that would allow the Senate to proceed on that pensions bill in a reasonable period of time.

I keep stressing reasonable period of time, keeping time requirements down, because in order to accomplish all of this, it is going to take a lot of organization, efficiency, understanding, and tolerance on the part of all of our colleagues as we go through.

Finally, I mention our continued efforts on the Executive Calendar, as well as a number of other legislative items that will be in wrapup. We will consider those nominations and clear legislation each day this week as they become available, a lot of work over a very short period of time.

That gets us through this week. Then people ask, what about next week? Until we see the pacing over the next several days, it is going to be impossible for me to really know exactly when we are going to be out. But I remain hopeful that we can work through the issues that I just mentioned and finish this week.

The next question: When does this week end? Does it end Friday afternoon, Saturday, or Sunday? I cannot answer that yet until we get a little bit further.

There is a chance we could do all of that by late Friday afternoon. However, if it becomes necessary to stay longer, either into the weekend on Saturday or into next week, then we will certainly do just that. Senators are going to have to remain flexible with their schedules beyond Friday. I do want to at least throw out that a weekend schedule would be possible because I know a lot of people have things scheduled. So please keep your calendars flexible.

In December, I can also say the following just for planning purposes, and that is that we will not be in for votes in December before Monday, December 12. I will not know until later this week, Saturday night or maybe Monday night of next week exactly what the plans will be for the week beginning December 12. So again I ask our colleagues to keep their schedule flexible in case we have no choice but to return sometime during that week.

What I have just said is going to stir the pot with lots of questions coming forward, but that is about as much as I know right now. I will share the information on schedule with colleagues as soon as it becomes apparent to me based on how much work we get done today, tomorrow, the next day, and over the course of this week.

On another issue, but related to the bill that we are returning to shortly, we are resuming consideration of the National Defense Authorization Act of 2006, day No. 6, and we will complete that bill tomorrow. I do want to thank Senator WARNER for his steady leadership. Under the guidance of our chairman, we have been able to proceed in a very orderly and smooth manner on a very important bill.

Last month, I sent a request to the minority leader asking for his agreement to keep amendments limited to issues that are important to our military personnel and armed services and that are within the jurisdiction of the Senate Armed Services Committee. Fortunately, we were able to reach agreement and do just that. I do want to thank our colleagues for their patience and cooperation in allowing us to move forward on a bill that is central to America's national security.

MOMENTOUS AND HISTORIC TIMES FOR AMERICA

Mr. FRIST. Mr. President, these are momentous and historic times for America. In just 4 years, we have toppled two of the most brutal regimes in human history and liberated 50 million people from tyranny. Afghanistan and Iraq are now governed by the consent of the people under constitutions that have been ratified by the popular vote. Many people simply would not have believed that just several years ago.

Next month, on December 15, the Iraqi people will vote to form a permanent government. On that day, they will show, once more, their tremendous courage, boldness, and fortitude in moving their country toward full democracy and independence.

While the news media focuses on the terrorist activity and the terrorist insurgency, by any standard of history, Iraq and Afghanistan are making remarkable progress. Only 4 years ago, Saddam Hussein and the Taliban seemed like permanent, malignant fixtures in the Middle East, but today Saddam sits in prison on trial for his life, and the Taliban no longer rules the Afghani people.

Meanwhile, progress is cropping up all over the region. Again, the news media simply does not cover it, and we always hear excuses why that might be the case. But if one just looks back, they will see that Egypt has just held its freest elections in history.

I had the opportunity to be in Lebanon about a month after this, in April. But this spring, on March 14, the Lebanese people rose up in a remarkable protest that was indeed televised throughout the world. We all saw it. After 30 years of occupation, Syria was forced to withdraw. Libya has given up its weapons of mass destruction program and is now cooperating with international inspectors. Kuwait has granted full political rights to women, and democracy is slowly beginning to take root in Saudi Arabia.

All of this has been made possible by the bravery, valor, and strength of our men and women in uniform. They deserve our deepest respect, gratitude, and our unwavering commitment to the success of their mission. These young people heard the call of duty and they went to the frontlines to defend America.

Every day, at risk to their own lives, our soldiers are helping the Iraqis secure a democratic future. They are training Iraqi forces to defend and protect the Iraqi people, and real progress is being made. The Iraqis are getting stronger and they are getting more skilled at the dangerous work of facing down the terrorist enemy.

In the recent Tal Afar operation, Iraqi forces outnumbered coalition forces for the first time in a major engagement. Eleven Iraqi combat battalions were independently employed in Tal Afar, twice the number than in Fallujah operations this year. That is progress.

Currently, 116 Iraqi security forces are conducting operations, and Iraqi civilians are gaining confidence handling the matters there and in providing tips and information to help defeat the insurgents in the region.

Meanwhile, Iraq continues to build and improve its infrastructure. Again, you don't see it on the nightly news or on the 24-hour coverage. Since the liberation, coalition forces have helped complete over 4,000 reconstruction projects, including 3,400 public schools, 304 water projects, 257 fire and police stations, and 149 health facilities.

Under Saddam, Iraq's infrastructure was in shambles. Citizens were not allowed free access to the media or to communicate freely with one another. Saddam maintained his iron grip by keeping his people fearful and totally cut off from the outside world. But now that has changed. Slowly but surely, under the democratic leadership, Iraq is emerging as a modern country. Internet subscribers have risen from 5,000 to 196,000. It is opening up. Light is shining into the country and to the people of Iraq.

Now over 4.5 million Iraqis have telephone service, and that is a fourfold increase to what it was before the war. Under Saddam there was nothing such as that. There was no independent media. Today, Iraq has more than 100 newspapers and magazines. There are over 40 commercial television stations broadcasting to an eager Iraqi public. They are hearing and seeing things for the first times in their lives.

We hear the critics hurtle invective and level false charges against the administration. That is disappointing. We know some are, indeed, trying to rewrite history. We hear it on the Senate floor and we see it on the television news shows. This rewriting of history is wrong. It shows, to my mind, very little respect for the very things—the freedom, the democracy, the transparency, letting the light shine in—the sort of things our men and women are fighting for overseas.

At the same time that we hear this invective and these false charges, brave men and women—American and, as I just mentioned, Iraqi coalition forces,

and Afghanis—are working hard to promote democracy and freedom in the heart of the Middle East. We salute them.

Governments that were once sworn enemies of the United States are now sworn enemies of the terrorists they once harbored and people who feared their government are now active participants in its transformation. It is huge progress.

The Defense authorization bill before us provides our soldiers with the resources and the training, the technology, equipment, and the authorities they need to win this global war on terror. From cutting-edge technologies to personnel protection systems, the authorization bill keeps our military system strong so our men and women in uniform can keep America safe.

I look forward to passage of the Defense authorization bill tomorrow. The Senate has no higher duty than to protect and defend our fellow citizens.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Missouri.

Mr. BOND. Mr. President, I ask unanimous consent to proceed as in morning business for up to 10 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

JULIE DAMMANN

Mr. BOND. Mr. President it is both with deep gratitude and regret that I announce to my colleagues the liberation of my Chief of Staff, Julie Dammann, from the public sector.

Julie has been with me since I came to town in 1987 and has been a perfectly reliable source of sound judgment, energy, and friendship.

Within any successful enterprise, there is the heart of the operation. In the case of Julie, she has been the heart, the legs, the mind, the backbone, and the can-do spirit of my staff.

In addition to her professional service, she always subsumed her interests to mine, to the Senate, to the public interest, and most important, to our country. For the Nation, she has been a loyal public servant of the first order and a true patriot.

For me, from the time she first marched into my office, she has been my friend. Remarkably, from that first day to the present, through 19 Congressional sessions, 3 reelections, marriage, motherhood, and her bravely defiant and prevailing fight against cancer, she has never stopped. Chemotherapy met its match. She never rested, and she never let me rest either. F. Scott Fitzgerald once said that ''action is character,'' In that case, Julie is character. Some who have dealt with her would say ''character'' is entirely appropriate.

Among her many unique talents is what I have learned is referred to as multitasking. At any given time, she can be talking with me, listening to C–SPAN, Blackberrying instructions to staff, while checking out statistics of the previous Vikings game and evaluating the potential draft picks 9 months in advance. When she is talking, we all listen as fast as we can, but it can be very hard to keep up.

Our great country sends a lot of talent and integrity to Washington to staff our congressional offices and Julie is as good as I have seen.

Few understand the high-profile issues that are in the papers every day. Julie comprehends those ''big'' issues, but is extraordinary with the issues that are low on visibility and high on complexity. She has handled issues including farm credit, patent protection, voting reform, postal reform, highway transportation funding formulas, and California's clean air enforcement regulations, just to mention a few. Her intellectual dexterity has earned her extraordinary respect among her colleagues who have worked with her; and particularly those who have worked against her.

Julie began her work for the Senate in 1979, as an intern with Senator Rudy Boschwitz, eventually coming to Washington in 1982 as one of his legislative assistants—where one of her first major assignments was the Highway bill.

In 1987, after joining my staff as Legislative Director, she met Rolf Dammann at the National Republican Senatorial Committee who was apparently interested in more than her highly-regarded agricultural acumen. Rolfs new found interest in Budget and appropriations issues eventually paid off and they were married—after the 1988 election, of course. They both enjoy politics, history, golf, and German beer. As legendary Green Bay Packers coach once said, ''On third and long, I'll take the beer drinkers to milk drinkers any day.'' But more on the legendary Packers later.

Rolf and Julie are the proud parents of two daughters, Monika who is now 10, and Paula 8.

In 1997, Julie became my Chief of Staff.

During consideration of the Fiscal Year 1988 Va/HUD appropriations bill, we were able to expedite completion of the bill by successfully appealing to Senators that Julie needed to leave the floor to have her second daughter who was due to arrive that very day. Betting on the Senate internally to be family-friendly was a bold strategy Julie suggested, but it worked.

I noted to the Senate that:

I want to make a special mention of my chief of staff, Julie Dammann, whose second child was due today and she stayed with us throughout all the proceedings and wanted to see the VA-HUD bill delivered first. She has been an invaluable help in all legislative activities and helped us shepherd this through, So, a very special thank you, and best wishes to Julie, to Rolf and their other daughter, Monika. Again, I express my appreciation.

Senator MIKULSKI echoed the comments saying:

I hope that she can go home, rest easy, put her feet up and we are looking forward to being the proud Godparents of Bond-Mikulski. Maybe we will name something after her in conference.

In any event, the bill passed, and Paula arrived.

Julie was born in Roseville, MN and graduated from the University of Minnesota while also becoming a diehard Gopher, Vikings and Twins fan. For those indiscretions, she was forced to undertake an amnesty program and extensive, but unsuccessful, Bond-office Missouri rehabilitation program.

The fact that she was able to stay in my employ after the Twins-Cardinals World Series of 1987 an epic tragedy which occurred in the horrible chamber the twins call a baseball stadium, speaks volumes to her otherwise high value.

In fact, the only successful indoctrination resulted in the staff being forced to root against the arch-rival Green Bay Packers. Even one of my leatherneck Marines on staff, a Packer fan, minds his football manners around Julie.

Rolfs father, a native of Germany, bought Julie a 2-foot-tall Packers NFL action figure for Christmas one year as a joke—it sat in the garage unopened for over a year until it was re-gifted to a friend in Germany. Julie believes that the opposition should be given little room to breath and that U.S. citizenship is a privilege which should not be abused.

But while competitive, she always respected the process and the people on both sides working diligently to pursue the agenda they were elected or hired to pursue.

Through all the pressures, high expectations, and fast city life, I think that Julie may be proudest of her terrific family and, proudest that to this day, she quite obviously remains a small town Minnesota gal—hard work, loyalty, integrity, optimism, enthusiasm, and courage, which can often be misinterpreted in Julie's case as stubbornness.

Her parents, the late Dr. Paul Hasbargen and Mrs. Ervina Hasbargen made Washington a better place by producing Julie and lending her to the Federal Government.

For me, having Julie has been one of my greatest blessings in public life. In this case, it is unlike losing one member of the family because I am simultaneously losing a colleague, a trusted advisor, and, yes, at times a mother. We know that she will be very successful in the private sector, with her intelligence, experience and drive.

Julie, with the deepest affection, we have been honored to be near you for so many years. We will miss you. We wish you and your family the very best.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DORGAN. Mr. President, I ask unanimous consent to speak in morning business for 10 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

TRADE ISSUES

Mr. DORGAN. Mr. President, I was just asked by a news reporter about the President's trip to Asia. The President is now going to Japan, Korea, and China and will be talking, presumably, about a wide range of issues, including trade. My hope certainly is that he will talk about trade.

Last month, we had a trade deficit of $66 billion—in 1 month—one-third of it from China. When the President goes to China, he could visit a lot of American jobs because the jobs that used to be here in America exist now in China—jobs that made bicycles, Radio Flyer's Little Red Wagon, Tony Lama boots. The jobs that used to make a wide range of products now exist in China. An American President—any American President—visiting China could visit a lot of American jobs. They are not the same kind of jobs that existed in America because in America, in most cases, those jobs were performed by employees who made a decent wage and who had benefits. No longer, in most cases. Those jobs in China are being performed by people who are being paid a small amount of money and no benefits.

By the way, if they complain about the working conditions, they will be either fired or put in prison.

As the President goes to China in the shadow of last month's devastating announcement of a $66 billion monthly trade deficit, one-third of it coming from China, what should the President do? It seems to me the President, with respect to China, Japan, and Korea—all three of those countries—should begin to get tough and exhibit on the part of this country a backbone that says to countries with whom we do business, we expect and demand and deserve fair trade.

Fair trade means it is mutually beneficial. It is not fair, and it is not mutually beneficial when last month—when the last month for which we had reporting—we bought one dollar's worth of goods from China, and for every dollar's worth of goods from China we sold them 10 cents' worth. A dollar and 10 cents—that is not fair trade. With a $66 billion trade deficit, with nearly 20 percent of it coming from the country of China, we ought to expect something substantially different.

The Commerce Department announced that the trade deficit that shattered all records was in the month of September. Our country had a trade deficit of $66 billion.

This is what it looks like. Our country is choking in red ink. Behind this red are American jobs leaving for China. Companies know they can simply get rid of their American workers and save a lot of money by hiring people in Third World countries—in this case, China—and they can presumably boost their profits believing, apparently, that people are like wrenches and pliers. You just get rid of them when you are done with them and find something less expensive. Go and hire that less expensive commodity—in this case ''commoditizing'' labor.

This is what our trade deficit looks like with China. We have a $220 billion annual deficit with China. You can see what has happened. We are sinking into a deep abyss with respect to the trade deficit with China.

One of the reasons for the trade deficit is piracy and counterfeiting. That is just one of the reasons.

Let me describe something interesting. This happens to be the logo for the 2008 Chinese Olympics. It says: Beijing 2008. It is a great-looking logo. It actually belongs to the Chinese. The Chinese know how valuable a logo like this is because in Greece they had the logo for the Greek Olympics, and I am told they raised something over $850 million with this logo. So the Chinese know.

First of all, this logo belongs to them. Secondly, it is very valuable. And some people on the streets of China decided they were going to counterfeit this logo. They decided, We are going to pirate this logo. They started selling mugs, coffee mugs, banners, all kinds of things with the official Chinese logo on it for the 2008 Olympics.

Guess what. The Chinese Government can, in fact, control piracy and counterfeiting. They demonstrated it.

The President, if he gets out of the car and walks down the street in Beijing, will not find someone selling counterfeit goods. They are gone. They are in prison. They are off the streets. The Chinese Government shut them down, just like that, in an instant.

So when it is their money that is at stake, they understand how to stop piracy and counterfeiting. They do it.

Two-thirds of all counterfeit and pirated goods coming into this country come from China. Does China lift a finger to stop it? Not a finger; don't care; doesn't matter to them. It mattered when it was goring their ox, when they were about ready to lose money. Then it mattered.

So the question is, What do we do about this? I could put up a chart that shows Japan, a $60 billion to $70 billion a year—every single year—trade deficit.

I could put up a chart that shows Korea and talk about my favorite subject with Korea: that little old Dodge pickup truck called the Dodge Dakota. I kind of like the name because it is named after my State—Dakota. It is so wonderful they named a pickup truck after it.

At a time when 700,000 vehicles come into this country over the high seas from Korea to be sold to the American consumers, we are able to sell, if we are lucky, about 3,800 to 3,900 vehicles in Korea. So 700,000 this way, and 3,800 to 3,900 going to Korea.

Why is that? The Koreans don't want American cars in Korea, and 99 percent of the vehicles on the roads in Korea are Korean-made vehicles. That is what the Korean Government wants.

The Dodge Dakota folks thought they would have a niche in Korea selling Dodge Dakota pickup trucks. For the first 3 or 4 months they started selling some. All of a sudden, the Korean Government shut them down just like that. With Japan, with Korea, and with China, the fact is, in all of these cases, governments take action to complete trade arrangements with us that are not mutually beneficial—trade arrangements that hurt us, ship our jobs overseas and help them.

This trip by the President is very important. The question is, Will this country stand up for its own economic interests? There is no evidence in the past that it will.

My colleague, Senator GRAHAM, and I have offered several pieces of legislation on these very issues. But there is a giant yawn on the part of the U.S. Congress, not very interested; giant yawn at the White House, not very interested.

Why is that? It is because most of these policies—I am talking about policies that affect the jobs of our citizens, policies that affect this country's economy, and whether we grow or not, whether people have a good job that pays well with benefits—are viewed through the lens of soft-headed foreign policy and not hard-nosed economic policy.

That is the problem. You have to run all these things by the U.S. State Department to see if we could begin to be a little bit tough and take some action, maybe, with respect to some unfair trade practices of the Chinese. Oh, no. We are worried about offending the Chinese. Don't do it.

They are engaged in managed trade and hard-nosed economic issues, and we are engaged in soft-headed foreign policy.

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

Mr. DORGAN. I would be happy to yield.

Mr. GRAHAM. I don't know if anyone has done an analysis of our trade deficit. What percentage does the Senator believe is directly attributable to unfair trade practices on behalf of the Chinese? It is one thing to be outworked. If people work harder than you do and are smarter than you are, shame on you. But I believe, as the Senator does, that a lot of the market share that we are losing in the trade deficit explosion has to do with Chinese Government policy when it comes to trade behavior rather than just simply outworking the American worker.

What is the Senator's view on that?

Mr. DORGAN. I don't have a numeric answer to that. But I think it is self-

evident that most of the trade deficit we have with China has to do not with fair competition but a manipulation of currency, a refusal to deal with piracy and counterfeiting, a refusal to open their markets. I think that is what it is about.

To give you a point of reference, the U.S Trade Ambassador's Office, on April 29 of this year, issued its report. This is our official Government report. It concludes that Chinese piracy was at epidemic levels and that the Chinese had broken promises.

Despite the fact the Chinese continued to break promises, piracy of our intellectual properties was at epidemic levels, and two-thirds of the pirated products coming into this country are coming from China, despite that, our Trade Ambassador says it is not ready to file a WTO case against China. Why? Because, instead, we are going to put China on a watch list. Boy, that will teach them. You put somebody on a watch list, and that will strike fear in the hearts of almost anybody. A priority watch list.

Here are the deficits with China. Going back to 1996, $39 billion. Go back another 7 years, and we had a balanced trade with China. But it is sinking deeper and deeper into this abyss. Now, all of a sudden we are going to put them on a priority watch list.

On behalf of farmers in North Dakota, I can say I know that inside the administration, in the Trade Policy Review Group, they made a recommendation that we should take action against China with respect to unfair trade dealing with wheat. But the State Department said they thought it would be too much ''in your face.'' So they wouldn't do it. They ran it through the State Department. Would this offend somebody if we decided they ought to play fair?

Yes. It might offend them. Let us not do that.

I have said many times there is not anyone in this Chamber whose job is jeopardized by this unfair trade with these three Asian countries.

I could also describe it with Canada, Mexico, and the European Union as well. But because the President is on a trip to Asia, I am talking about the problems we confront there. It is safe to say there is no one in this Chamber serving in the Senate who is going to lose his or her job due to a bad trade agreement, or due to us not having the backbone to demand of other countries that they play fair. Nobody here is going to lose their job. We will just sit around, thumb our suspenders, toot our horn, and put on our blue suits every morning. But nobody's job is in jeopardy. It is just a lot of other people's jobs that are in jeopardy.

Do you remember that little Etch A Sketch? Everybody played with Etch A Sketch. There were two knobs on it. You had some sand in there, and you tried to draw a picture on your Etch A Sketch. Gone—gone to China. They are all gone.

I could go through a list of 100 companies. In fact, I should bring over just the first 6 months of this year, the Department of Labor's report which is 33 pages, on both sides, single-spaced, of the names of companies that have sourced jobs off our shores. It is 33 pages, single-spaced, the names of companies—not people, companies.

It is unbelievable what is happening. They are selling this country piece by piece. When today we import $2 billion more than we export, the financial transaction is we put in the hands of foreigners the currency or securities by which they own part of America. Each day they buy $2 billion more of this country. It doesn't seem to mean a whit to anybody.

Last week was the announcement of the $66 billion monthly trade deficit. Did you hear any outcry from this Chamber? I came over and gave a little speech—but nothing. It is almost like everybody pulls their sombrero down and takes a big siesta and sleeps forever on this subject.

Then what is going to happen someday—because I think every economist understands this cannot stand. You can't keep doing this. You add this $700 billion trade deficit to a $550 billion budget debt increase this year—yes, this year—that is $1.2 trillion that we sunk deeper in debt in this country. We cannot keep doing that. Every economist understands that. But nobody is saying much because we are all for the jingoistic ''free trade.''

Give folks some tambourines and robes, put them on the street corner, and let them bang around out there chanting ''free trade.'' But when the American people have had enough of it, they will say stop already. We fought for 100 years for good jobs with good benefits and the right to organize; now you will pole-vault over that and ship the jobs elsewhere and go visit them as you talk about trade? At some point when this collapses—and it will; this cannot continue—when it collapses of its weight, we are all going to stand around, thumbing our pockets and saying: We knew it could not last.

Really? Read the Washington Post. By the way, if you do read the Washington Post, you will not read both sides of this debate because the Washington Post will run only one side. I have actually gone back for 6 years. We did a column appraisal of what the Washington Post runs with respect to trade. If you are for free trade, which is jingoistic nonsense about shipping America's jobs overseas and running our trade policy through the eye of the needle called foreign policy, if you are for that, God bless you, send some oped pieces our way, we would love to run them. If you are on the other side, if you believe in fair trade and that free trade and the monumental deficits are hurting this country and shipping jobs overseas, try to get an op-ed piece published in the Washington Post. Good luck. Take some medicine, it will take some while. It just will not happen. The whole town is like that on this issue.

I understand, when we have that much invested in failure, you certainly want to defend it. But there will come a time, in my judgment, when everyone has to understand this is not representing the long-term economic interests of our country.

Producing products for 30 cents an hour with kids working 7 days a week so you can ship them to a big box retailer in this country and sell them for pennies might be good, in the short term, for corporate profits, but it is not good for the long-term economic interests of this country. One day enough Members will wake up. It has not happened yet. It did not happen on the Central America Free Trade Agreement which we had in this Senate, another chapter in the book of failures. It did not happen. Enough said.

First, let's agree that we will bind our hands and not allow any amendments. So agree not to be original and let's not think about this stuff. And second, when we have the vote, we will also agree to vote for a treaty—and it is a treaty but was called an agreement so it does not need 67 votes—we will agree to something that was negotiated behind closed doors somewhere else. And we will continue to open the new testament of trade dogma believing that somehow it will have a happy ending. It will not.

President Bush is on his way to Asia. I want him to succeed. But I doubt whether he will raise these hard-nosed, tough trade issues in a significant way that tells these countries, ''Enough is enough.'' I want our country to stand up for its economic interests. Its economic interest is rooted, yes, in some expanded trade. No question about that. But it is rooted especially in the demand to require full trade.

If I might make one additional observation, the same companies shipping companies overseas all in the name of profit because they do not say the Pledge of Allegiance in those boardrooms anymore, those same companies do not want to pay taxes in most cases. Here is an interesting statistic: In the Cayman Islands, there is a five-story white building. That five-story white building is home to 12,748 corporations. They do not all live there. No, no, they get their mail there. It is a mail box. The mail box is for the purpose of being able to say they belong to the Grand Cayman Islands and they can avoid paying taxes in the United States.

Isn't that interesting, and also disgusting, that 12,000 companies are claiming one white five-story building in the Cayman Islands as their home?

Finally, as part of all of this, this Congress—yes, this Congress—decided to give a special gift to those that have exported jobs. The gift was to say that in this year, if you have moved jobs overseas, if you have created foreign subsidiaries and you are doing business overseas, we will allow you to repatriate your foreign earnings on which

you expected someday to pay a tax in the United States, we will allow you to repatriate those earnings, and you get a special income tax rate that no other American gets. It is a 5.25 rate. Does Mrs. Smith pay that? Mr. Jones? Mr. Johnson? The people of North Dakota pay that? The people of Tennessee? No, no, only one group. Just the group that moved their jobs overseas, made a lot of money overseas, who expect to have to pay income taxes on it. When they bring it back to this country, they are told, Bring it back, we will give you a sweetheart deal, 5.25 percent.

That was called a JOBS Act. In fact, we now see the result. Companies are bringing somewhere around $300 billion back, and the very companies that are repatriating these earnings and paying 5.25 percent income taxes—a fraction of what the lowest income American is paying—they are cutting jobs and moving jobs overseas.

My colleague who sat in this desk, the amendment that would have stripped that little sweetheart deal for these companies. I supported him, spoke for him, and he lost. Why? Because as in the rest of trade, there are sufficient numbers who will stand up in this Senate and say: Sign me up. Let me give a special deal to those companies that not only do business in that five-story white building in the Caymans but also give them an opportunity to pay 5.25 percent income tax when they repatriate the money to the United States.

I hope one day all of those workers in America who had good jobs, who were proud of them, and who were taking care of their families someday march on this Capitol and ask the question: Where is my job? What did you do to my job? How much did you reward the people that took my job and moved it overseas? It would be an interesting question and one that ought to be answered by people in this Senate, by people in the White House, and people in the House as well.

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

Mr. NELSON of Florida. Mr. President, I ask to be recognized.

Mr. LEVIN. Would the Senator from Florida ask that he be allowed to proceed as in morning business?

Mr. NELSON of Florida. Mr. President, I ask unanimous consent I be allowed to proceed as in morning business.

The PRESIDING OFFICER (Mr. DEMINT). Without objection, it is so ordered.

Mr. LEVIN. I thank the Senator.

MEDICARE PRESCRIPTION DRUG BENEFIT

Mr. NELSON of Florida. I thank the Senator and I thank the Senators from South Carolina and Michigan for giving me the privilege to share with the Senate what I have experienced since I have returned from a meeting in West Palm Beach with senior citizens concerned about the implementation of the prescription drug benefit for Medicare which starts tomorrow.

This prescription drug benefit, which many in this Senate opposed because it was faulty, it was a meager benefit, and it broke the principles of free enterprise economics by not allowing the Federal Government, through Medicare, to negotiate the prices of prescription drugs downward by bulk purchases, as has been the case in Government for the past two decades through the Veterans' Administration, as well as the Department of Defense. Veterans today pay $7 per month for their prescription drugs. Part of that is subsidized. But a large part of that is the fact that the Veterans' Administration buys prescription drugs in huge quantities and therefore negotiates a lower price.

Not so with the prescription drug benefit passed for Medicare in this Senate, of which almost half—maybe not quite half of the Senate, including this Senate—voted against. But, nevertheless, it is the law. It is being implemented tomorrow.

The current law says the senior citizens of this country have until next May in order to make a determination which one of these plans—often they may be through an HMO or they may be through some organization created for the dispensing of the drugs—but which one of these plans they will choose, or choose nothing, especially if their former employer, now that they are retired, is providing under their retirement a prescription drug plan.

It sounds, on the surface, that a decision could be made. But the fact is a senior citizen in West Palm Beach this morning told me there were 103 plans that senior citizens were trying to choose between. There is confusion. There is concern. There is fear that if they do not choose the right plan, then they are not going to be able to change for a whole year.

There is all of this confusion and additional concerns. Maybe the senior citizen lives in a small town that has only one or two pharmacies, and naturally the senior citizen wants to continue to get their prescription drugs from that pharmacy. But what happens if the plan they choose does not use that pharmacy? Again, concern for instability, concern for not being able to get the kind of drugs they want and need.

Another concern voiced to me this morning in that meeting in West Palm Beach was, What if I choose a plan that, in fact, provides the drugs my doctor prescribes for me now, but what happens if the doctor changes the prescription to a drug that is not covered by that particular plan? They are stuck, and they are stuck for a year, until at the end of that year when they can change plans.

These are the questions senior citizens are asking all around this Nation. And they are asking these questions in my State of Florida.

What should we do? A very practical approach is to extend the deadline so senior citizens will have more time to make up their mind, to evaluate the plans, to be counseled in order to get the right plan. Remember, with the advances of modern medicine through the miracles of prescription drugs, so often the quality of life is dependent upon the right prescription and that prescription being available to the person and especially so to the senior citizen. It is my hope the Senate will recognize we need to buy some time for our seniors.

I have filed a bill that extends the deadline from May until December. That legislation would also allow, in the course of that year, up to the end of 2006, if the senior citizen makes a mistake and chooses the wrong plan and then realizes their mistake, they will be able to change their plan. Furthermore, for those with the great uncertainty of whether they are going to stick with their former employer-based prescription drug plan, that if they choose and make a mistake and want to go back to their employer, they have that grace period of 1 year up to the end of December of next year in order to be able to go back to their employer-based plan.

Is this too much to ask for our seniors? Out of all of the confusion, out of all the concern and what is now turning into fright for our seniors, this is, after all, what was enacted, and was supposed to help senior citizens.

The Department of HHS, so you can clarify this, Mr. Senior Citizen, says you can go on our Web site. Senators, I bet you all have a number of senior citizens who are not accustomed to using the computer and going on the Web. We need to give them some relief.

Now, the bill I filed, I am looking for the legislative vehicle to attach it to as an amendment.

I wanted the Senate to know, directly expressed to me in this meeting this morning, the great confusion and consternation that is being felt out there among many of those in what Tom Brokaw labeled the ''Greatest Generation,'' those who have helped us to enjoy the freedoms we have. I think for us to do less than to help them out would certainly be less than the honor we should pay to our seniors.

At an appropriate time, with an appropriate legislative vehicle, I will offer this bill as an amendment.

In the meantime, I thank the leadership of our Senate Armed Services Committee for the great job they have all done in handling this legislation. And I thank them for the privilege of serving on that committee. It has been a great blessing to me to work with people of the caliber we have on our Senate Armed Services Committee.

Mr. President, I yield the floor.

RESERVATION OF LEADER TIME

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

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2006

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 1042, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1042) to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

Pending:

Graham amendment No. 2515, relating to the review of the status of detainees of the United States Government.

Warner/Frist amendment No. 2518, to clarify and recommend changes to the policy of the United States on Iraq and to require reports on certain matters relating to Iraq.

Levin amendment No. 2519, to clarify and recommend changes to the policy of the United States on Iraq and to require reports on certain matters relating to Iraq.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, before the Senator from Florida leaves the floor, I wish to do two things. First, I want to thank him for the energy and the perception he has shown in pointing out some of the problems with this prescription drug benefit which was voted on.

He has a lot of seniors in his State, and he is uniquely aware of, sensitive to, and determined to see if we cannot make some changes in this process which will make what we have done a lot more friendly to seniors. I cannot think of anybody in this body who knows more about this subject or is more determined to make the changes necessary for the benefit of our seniors.

Because of the confusion out there, the uncertainty is rife. We do not have quite as many seniors in our State as they do in Florida, but our seniors are telling me pretty generally what the seniors down in Florida are saying to the Senator from Florida. I thank him and commend him for the leadership he is taking and for the proposed change he is proposing.

Secondly, I thank him for his service on the Armed Services Committee. We have a wonderful committee. It is a bipartisan committee. The Senator from Florida, Mr. NELSON, makes an important contribution to it. He is there all the time with very perceptive questions that are intended to support the men and women in our military. I thank him for his participation.

Mr. President, the Senator from New Mexico, I believe, now is ready to offer an amendment which is referred to in the unanimous consent agreement. I will yield to him 15 minutes, should he so need 15 minutes, on our side of the debate for that purpose.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. BINGAMAN. Mr. President, I thank my colleague from Michigan for yielding.

AMENDMENT NO. 2523 TO AMENDMENT NO. 2515

Mr. President, I send an amendment to the desk and I ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN] proposes an amendment numbered 2523 to amendment No. 2515.

Mr. BINGAMAN. 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 improve the amendment)

Strike subsection (d) and insert the following:

(d) JUDICIAL REVIEW OF DETENTION OF ENEMY COMBATANTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to consider an application for writ of habeas corpus filed by or on behalf of an alien outside the United States (as that term is defined in section 101(a)(38) of the Immigration and Naturalization Act (8 U.S.C. 1101(a)(38))—

(A) who is, at the time a request for review by such court is filed, detained by the Department of Defense at Guantanamo Bay, Cuba; and

(B) for whom a Combatant Status Review Tribunal has been conducted, pursuant to applicable procedures specific by the Department of Defense.

(2) EXCEPTIONS.—This subsection does not apply to the following:

(A) An individual charged with an offense before a military commission.

(B) An individual who is not designated as an enemy combatant following a combatant status review, but who continues to be held by the United States Government.

(3) VENUE.—Review under paragraph (1) shall commence in the United States Court of Appeals for the District of Columbia Circuit.

(4) CLAIMS REVIEWABLE.—The United States Court of Appeals for the District of Columbia Circuit may not, in a review under paragraph (1) with respect to an alien, consider claims based on living conditions, but may only hear claims regarding—

(A) whether the status determination of the Combatant Status Review Tribunal with regard to such alien was consistent with the procedures and standards specified by the Secretary of Defense for Combatant Status Review Tribunals;

(B) whether such status determination was supported by sufficient evidence and reached in accordance with due process of law, provided that statements obtained through undue coercion, torture, or cruel or inhuman treatment may not be used as a basis for the determination; and

(C) the lawfulness of the detention of such alien.

(5) TERMINATION ON RELEASE FROM CUSTODY.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit with respect to the claims of an alien under this subsection shall cease upon the release of such alien from the custody or control of the United States.

(6) EFFECTIVE DATE.—This subsection shall apply to any application or other action that is pending on or after the date of the enactment of this Act.

Mr. BINGAMAN. Mr. President, before describing the amendment, let me talk briefly in opposition to Senator GRAHAM's amendment, the underlying amendment that was adopted by the Senate on Thursday, and address some of the mistaken claims that were made last week during the debate on that amendment.

There were a lot of statements made last week. It is important to be clear about what the Graham amendment does. The amendment, as drafted, as voted on last week in the Senate, would overrule a Supreme Court case issued earlier this year that recognized the longstanding right to file a petition for habeas corpus. This right is absolutely fundamental. It is the right of an individual who is being detained by the executive branch of our Government to question the legality of that person's detention.

Contrary to what Senator GRAHAM has said, I do not believe we are giving prisoners new rights in the amendment that I just sent to the desk or in the underlying bill. I believe we need to keep in place the rights that have already existed, that currently exist, and that the Supreme Court has recognized. We need to prevent the courts from being stripped of the authority they have and have always had.

Let me take a moment to address the notion that we should not care about these individuals because these individuals are terrorists. Frankly, I have no doubt that some of the individuals being detained at Guantanamo are a threat, and it is for this reason I have never advocated that we release these prisoners. But we need to recognize that not all of these prisoners are necessarily terrorists in the sense that we are debating that here.

There is a January 2005 Wall Street Journal article stating:

American commanders acknowledge that many of the prisoners shouldn't have been locked up here in the first place because they weren't dangerous and didn't know anything of value.

The article also quoted BG Jay Hood, the commander at Guantanamo, saying:

Sometimes, we just didn't get the right folks.

The deputy commander, GEN Martin Lucenti, was also quoted as saying:

Most of these guys weren't fighting. They were running.

My point is simple. It is reasonable to insist that when the Government deprives a person of his or her liberty—and in this case for an indefinite period of time—the individual have a meaningful opportunity to challenge the legality of their detention and challenge whether they are being wrongfully detained. This is not a radical proposition I have enunciated. It is enshrined in our Constitution. It was recently reaffirmed by our own Supreme Court in the Rasul decision.

That brings me to the second point. Last week, Senator KYL compared challenges by Guantanamo prisoners to a frivolous prisoner lawsuit filed by an inmate in Arizona who was unhappy

with the type of peanut butter he was being served at his meals.

Let's be clear. We are not talking about depriving a person of their right to eat a certain type of peanut butter. We are talking about individuals challenging their indefinite imprisonment. If a claim is filed that is frivolous, a court can simply refuse to hear the claim.

We are also not talking about suits against U.S. soldiers. There were statements made in last week's debate about ''we don't want these prisoners going and suing our soldiers.'' There is nothing in what I am proposing or what is currently in place that permits that. We are talking about suits challenging the legality of a person's imprisonment by our own Government. The right to challenge the legality of one's detention by the Government is one of the most fundamental human rights, the right to be free from being unlawfully detained by the Government.

It was also argued, last week, that by refusing to overrule the Rasul decision, which was issued by our Nation's highest Court this last year, we are giving Guantanamo prisoners access to rights that even our own soldiers do not enjoy.

Last week, Senator GRAHAM asserted:

Here is the one thing I can tell you for sure as a military lawyer. A POW or an enemy combatant facing law of armed conflict charges has not been given the right of habeas corpus for 200 years because our own people in our own military facing court-martials, who could be sentenced to death, do not have the right of habeas corpus. It is about military law. I am not changing anything. I am getting us back to what we have done for 200 years.

Frankly, that statement is completely an incorrect representation of what the Graham amendment does. If a U.S. soldier is detained for committing a crime, then that soldier is charged, provided an attorney, and tried pursuant to the Uniform Code of Military Justice. Military personnel can challenge a court-martial conviction by filing a writ of habeas corpus in a U.S. district court pursuant to 28 USC 2241. Cases such as Dodson v. Zeliz, which is a Tenth Circuit decision in 1990, demonstrate that they are provided such habeas corpus relief or the opportunity to file for habeas corpus.

One could also look at CPT Dwight Sullivan's article, ''The Last Line of Defense: Federal Habeas Review of Military Death Penalty Cases,'' in the Military Law Review, from 1994, to see that U.S. servicemen are also allowed to seek habeas review in death penalty cases.

Mr. President, I ask unanimous consent that a letter sent to me by the chief defense counsel for the Office of Military Commissions, COL Dwight Sullivan, that flushes out these points, be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. BINGAMAN. With regard to these Guantanamo prisoners, the administration has refused to apply the laws of war, and only a handful of the 500 prisoners held at Guantanamo have been charged. None have been tried as yet, and it is unreasonable to say that these prisoners are being granted more rights than our military personnel.

I would also like to take a moment to read to you the names of some of the many people who oppose the Graham amendment: John Hudson, a former Judge Advocate General of the Navy, has written to me indicating his strong opposition; John Gibbons, a former Nixon appointee who served on the Third Circuit Court of Appeals; Eugene Fidell, the president of the National Institute of Military Justice; Dwight Sullivan, the chief defense counsel for the Office of Military Commissions. And I have a long list of other distinguished former officials of our military. They have joined, and I will enter letters they have given to me as part of the RECORD in a moment.

These leaders have dedicated their lives to fighting for and preserving our freedom, democracy, human rights, and respect for the rule of law. They oppose the Graham amendment because they see it as contrary to the values and rights that the men and women of our armed services have fought for.

I have no doubt that some of my colleagues are concerned that if they vote against the Graham amendment, they would face 30-second attack ads accusing them of being soft on terrorism. But this is not about our resolve to defeat terrorists. This is about our resolve to maintain in place the legal protections on which our country was established. These are hard decisions. They are tough votes. This is the Senate. We have taken an obligation to uphold the Constitution of the United States, even in times of war.

The amendment I offer would maintain the right to seek a meaningful judicial review. Specifically, the amendment would allow individuals—any individual—to seek habeas review but would provide that the U.S. Court of Appeals for the District of Columbia Circuit would have exclusive jurisdiction to hear these claims. It would also limit the ability of a court to consider claims regarding one's living conditions, such as whether they were given peanut butter of a particular type or access to particular DVDs or whatever other frivolous claim might be envisioned. It would, however, allow a person to seek review regarding whether he or she is being unlawfully imprisoned. If a court determines that the detention is lawful, the court can simply deny the petitioner's application.

There are good provisions in the Graham amendment, but there are also some extremely problematic sections. Both the chairman and ranking member of the Judiciary Committee argued on the Senate floor, last Thursday, that this is an issue that needs careful consideration before the Senate Judiciary Committee. Unfortunately, it appears this proposal may have the votes to move forward.

The amendment I am offering will keep in place the necessary protections in our Constitution and in our common law, and it will also take the necessary steps to ensure there is a proper and expedited procedure for these proceedings.

Mr. President, let me, briefly, before I yield the floor, call my colleagues' attention to some of these letters that I think are extremely important and make the case extremely well. I have previously alluded to the letter I received from COL Dwight Sullivan, U.S. Marine Corps Reserve, Chief Defense Counsel for the Office of Military Commissions. This is the office that was established in the Department of Defense to defend people who are charged by military commissions.

Colonel Sullivan goes step by step through the various statements that have been made in support of the Graham amendment and refutes those contentions at every step.

I also have a letter from the National Institute of Military Justice, written by Eugene Fidell. Let me read it to my colleagues:

On behalf of the National Institute of Military Justice (and as a retired Lieutenant Commander in the U.S. Coast Guard Reserve), I am writing to express NIMJ's strong opposition to Senator Graham's amendment to the Defense Authorization Bill, withdrawing federal court authority to grant writs of habeas corpus on the petition of non-citizens in military custody as enemy combatants.

The proposed amendment would sanction unreviewable Executive detention that cannot be harmonized with our Nation's long-standing adherence to the rule of law. Military detention without due process is antithetical to our fundamental values, values that our men and women in uniform put their lives on the line to protect.

The practical effect of the amendment would be to validate actions by non-democratic countries around the world. Some of these countries may try to jail our citizens (including but not limited to GIs) on trumped-up grounds and then deny them access to judicial forums in which they might at least try to gain their freedom or fairer treatment. We should not take a step we would be unwilling to see others apply to our fellow citizens. We disable ourselves from objecting to flagrant lawlessness elsewhere when we shut the doors to our courts, which are the jewel in the crown of our democracy.

I will only add that oftentimes when NIMJ considers taking a position on a matter of public policy our directors and advisors have a range of views. That is one of our strengths as an organization. On this one, we are emphatically of one mind.

I also have letters from the Brennan Center for Justice in opposition to the Graham amendment, from the Franklin Pierce Law Center in opposition to the amendment, and a letter signed by nine former generals and admirals in the military indicating their opposition, also signed by Scott Silliman, former U.S. Air Force Judge Advocate, indicating their strong opposition to the Graham amendment unless it is changed as my amendment would change it.

I ask unanimous consent to print those letters in the RECORD.

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

BRENNAN CENTER FOR JUSTICE
AT NYU SCHOOL OF LAW,
New York, NY, November 9, 2005.

Re: Graham Jurisdiction-Stripping Amendment to Defense Appropriations Bill

DEAR SENATOR: The Brennan Center for Justice at New York University School of Law strongly urges you to oppose an amendment, sponsored by Senator Lindsey Graham, expected to be offered as early as today, that would strip all courts, including the United States Supreme Court, of jurisdiction to consider habeas corpus petitions or ''any other action challenging any aspect of the detention'' of foreign detainees held at Guantánamo Bay. We urge you to reject the Graham Amendment because it would violate key constitutional principles and would inflict great damage on both the reputation of the United States and our ability to persuade other countries to lend critical cooperation in counter-terrorism efforts.

The Brennan Center, founded in 1995, unites thinkers and advocates in pursuit of a vision of inclusive, effective, and just democracy. Our Liberty & National Security Project, initiated in July 2004, promotes thoughtful and informed debate about how to maximize security and safeguard civil liberties. It has published on the problem of classified evidence in terrorism trials and litigates on matters related to the Graham Amendment. Our scholarship and litigation experience suggest that the amendment neither reflects our long-standing constitutional traditions nor furthers our present counter-terrorism efforts.

In many ways, the war on terror is new. But it cannot justify shredding our oldest constitutional principles. Constant revelations of how the United States is treating detainees at Guantánamo and elsewhere have damaged our image around the world. It would be ironic indeed if the Congress's response were not to address the underlying problems but instead to make it more difficult for rights to be vindicated and facts to be learned.

In June 2004, the Supreme Court squarely rejected the federal government's position that Guantánamo Bay is a legal no-man's land, outside the reach of American courts. The rule of law now applies to Guantánamo Bay, and the federal courts have the authority to review government actions there to determine whether they are unconstitutional or otherwise illegal. Just last Friday, the Senate overwhelming and courageously voted to affirm the rule of law by bolstering the prohibition against government torture and cruel, inhuman, and degrading treatment. Yet the Graham Amendment would suspend the rule of law, including the anti-torture rule, for those detained at Guantánamo Bay. Even more troublingly, the amendment may extend to any and all aliens who lawfully reside in the United States.

Nothing is more emblematic of the rule of law than judicial review and the availability of habeas corpus in the courts. And nothing is a greater marker of the absence of the rule of law than the lack of judicial review of government action, especially the legality of executive detention. Stripping the courts of their historic habeas jurisdiction would violate separation-of-powers principles and undermine the checks-and-balances on which our Constitution rests.

This suspension of the rule of law has clear, long-term costs for our nation's efforts to combat terrorists. The Graham Amendment would terminate ongoing litigation on behalf of detainees at Guantánamo who have never had a fair hearing to prove their innocence. International condemnation of the perceived ''legal black hole'' of Guantánamo has been persistent and wide-ranging. Our allies have expressed broad concerns about the legality and morality of placing individuals beyond the rule of law. The Graham Amendment purports to achieve a short-term goal of minimizing government litigation but, rather, would only create a wave of new litigation. It would do this at the cost of tremendous damage to the United States' reputation overseas by sending the message that we cannot defend the decision to detain those at Guantánamo in a court of law.

The Brennan Center strongly urges you to reject the Graham Amendment to the Defense Department authorization bill. Please do not hesitate to call us at 212–992–8632 if you have any questions.

Sincerely,

MICHAEL WALDMAN,
Executive Director.
AZIZ HUQ,
Associate Counsel.

FRANKLIN PIERCE LAW CENTER,
Concord, NH, November 9, 2005.

Senator ARLEN SPECTER,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR SPECTER: As Dean of a law school and as former Judge Advocate General of the Navy, I am writing in strong opposition to the amendment which I understand Senator Graham intends to offer to S. 1042, the Defense Department Authorization Bill. Among other things, the proposed Graham Amendment would strip U.S. courts of jurisdiction to hear habeas corpus petitions from aliens who are detained by the United States or any other action which would challenge any aspect of their detention.

This amendment, however well-intentioned, is the wrong law at the wrong time. It appears aimed at fixing a problem that doesn't exist, and creates a raft of new problems of its own.

For generations, the United States has stood firm for the rule of law. It is not the rule of law if you apply it when it is convenient and toss it over the side when it is not. The Great Writ of Habeas Corpus has been at the heart of U.S. law since the first drafts of the Constitution. Indeed, it has been part of Western culture for 1000 years, since the Magna Carta. Creating broad exceptions that would categorically deny the writ to thousands of those subject to the full detention power of the U.S. Government should be done, if at all, only with the utmost care, serious debate and consideration, and attention to the practical effects of such a limit. The restriction on habeas contemplated by the Graham Amendment would be a momentous change. It is certainly not a change in the landscape if U.S. jurisprudence we should tack on to the Defense Department Authorization Bill at the last minute.

In any case, the practical effects of such a bill would be sweeping and negative. America's great strength isn't our economy or natural resources or the essentially island nature of our geography. It is our mission, and what we stand for. That's why other nations look to us for leadership and follow our lead. Every step we take that dims that bright, shining light undermines our role as a world leader. As we limit the rights of human beings, even those of the enemy, we become more like the enemy. That makes us weaker and imperils our valiant troops. I am proud to be an American. This Amendment, well intentioned as it may be, will diminish us.

More immediately, the Graham Amendment would be viewed by our allies and enemies alike as just another example of the United States taking a step down the slippery slope from the high road to the low road. It would increase the likelihood that our own troops, who daily face the risk of capture by any number of our enemies abroad, will be subject to ad hoc justice at the hands of those who would seize upon any excuse. I believe it is the duty of those who would put our troops in harm's way to deny our enemies any such an excuse.

I urge you to insist at the least upon full and forthright consideration of this Amendment by the Judiciary Committee. And I urge you to advocate vigorously for its defeat.

Sincerely,

JOHN D. HUTSON,
Dean and President.

NOVEMBER 14, 2005.

Honorable SENATOR,
U.S. Senate,
Washington, DC.

DEAR SENATOR: We understand that the Senate may revisit the issue of jurisdiction over habeas corpus petitions brought by aliens who are detained by the United States at Guantánamo Bay. We write to express our opposition to the court-stripping provisions of Amendment 2516 to S. 1042, the Defense Department Authorization Bill. We urge you to reject any proposal that would diminish the power of another branch of government and effectively suspend habeas corpus without thoughtful deliberation.

Amendment 2516 is the wrong law at the wrong time. It appears aimed at fixing a problem that doesn't exist, and creates a raft of new problems of its own.

For generations, the United States has stood firm for the rule of law. It is not the rule of law if you only apply it when it is convenient and toss it over the side when it is not. The Great Writ of Habeas Corpus has been at the heart of U.S. law since the first drafts of the Constitution. Indeed, it has been part of Western culture for 1000 years, since the Magna Carta. Creating broad exceptions that would categorically deny the writ to thousands of those subject to the full detention power of the U.S. Government should be done, if at all, only with the utmost care, serious debate and consideration, and attention to the practical effects of such a limit. The restriction on habeas contemplated by Amendment 2516 would be a momentous change. It is certainly not a change in the landscape of U.S. jurisprudence we should tack on to the Defense Department Authorization Bill at the last minute.

In any case, the practical effects of Amendment 2516 would be sweeping and negative. America's great strength isn't our economy or natural resources or the essentially island nature of our geography. It is our mission, and what we stand for. That's why other nations look to us for leadership and follow our lead. Every step we take that dims that bright, shining light diminishes our role as a world leader. As we limit the rights of human beings, even those of the enemy, we become more like the enemy. That makes us weaker and imperils our valiant troops. We are proud to be Americans. This Amendment, well intentioned as it may be, will diminish us.

More immediately, Amendment 2516 would be viewed by our allies and enemies alike as just another example of the United States taking a step down the slippery slope from the high road to the low road. It would increase the likelihood that our own troops—who daily face the risk of capture by any number of our enemies abroad—will be subject to ad hoc justice at best at the hands of

those who would seize upon any excuse. We believe it is the duty of those who would put our troops in harm's way to deny our enemies any such an excuse.

We urge you to insist at the least upon full and forthright consideration of the issues by the Judiciary Committee before allowing Amendment 2516 to become law and to exercise your role in oversight of the military. We urge you to advocate vigorously for full and fair judicial review.

Sincerely,

Lieutenant General Robert G. Gard, Jr., USA (Ret.); Lieutenant General Charles Otstott, USA (Ret.); Major General Fred E. Haynes, USMC (Ret.); Rear Admiral John D. Hutson, USN (Ret.); Brigadier General David M. Brahms, USMC (Ret.); Brigadier General James Cullen, USA (Ret.); Brigadier General Evelyn P. Foote, USA (Ret.); Brigadier General David R. Irvine, USA (Ret.); Scott L. Silliman, former United States Air Force Judge Advocate.

Lt. General Robert G. Gard, Jr., USA (Ret.)

General Gard is a retired Lieutenant General who served in the United States Army; his military assignments included combat service in Korea and Vietnam. He is currently a consultant on international security and president emeritus of the Monterey Institute for International Studies.

Lt. General Charles Otstott, USA (Ret.)

General Otstott served 32 years in the Army. As an Infantryman, he commanded at every echelon including command of the 25th Infantry Division (Light) from 1988–1990. His service included two combat tours in Vietnam. He completed his service in uniform as Deputy Chairman, NATO Military Committee, 1990–1992.

Major General Fred Haynes, USMC (Ret.)

General Haynes is a veteran of World War II, Korea and Vietnam. He was an infantry officer for 35 years and commanded the second Marine division and the third Marine division. He was also the senior member of the U.S. military at the U.N. military armistice at Pat, Mun Jom, Korea.

Rear Admiral John D. Hutson, USN (Ret.)

Admiral John D. Hutson served as the Navy's Judge Advocate General from 1997 to 2000. Admiral Hutson now serves as President and Dean of the Franklin Pierce Law Center in Concord, New Hampshire.

Brigadier General David M. Brahms, USMC (Ret.)

General Brahms served in the Marine Corps from 1963–1988. He served as the Marine Corps' senior legal adviser from 1983 until his retirement in 1988. General Brahms currently practices law in Carlsbad, California and sits on the board of directors of the Judge Advocates Association.

Brigadier General James Cullen, USA (Ret.)

General Cullen is a retired Brigadier General in the United States Army Reserve Judge Advocate General's Corps and last served as the Chief Judge (IMA) of the U.S. Army Court of Criminal Appeals. He currently practices law in New York City.

Brigadier General Evelyn P. Foote, USA (Ret.)

General Foote was Commanding General of Fort Belvoir in 1989. She was recalled to active duty in 1996 to serve as Vice Chair of the Secretary of the Army's Senior Review Panel on Sexual Harassment. She is President of the Alliance for National Defense, a non-profit organization.

Brigadier General David R. Irvine, USA (Ret.)

General Irvine is a retired Army Reserve strategic intelligence officer and taught prisoner interrogation and military law for 18 years with the Sixth Army Intelligence School. He last served as Deputy Commander for the 96th Regional Readiness Command, and currently practices law in Salt Lake City, Utah.

Scott L. Silliman, former United States Air Force Judge Advocate

Mr. Silliman served as a United States Air Force Judge Advocate for 25 years, from 1968–1993, before joining the faculty of Duke University School of Law as a professor of the Practice of Law. He is also the Executive Director of the Center on Law, Ethics and National Security at Duke University School of Law.

EXHIBIT NO. 1

DEPARTMENT OF DEFENSE, OFFICE OF THE CHIEF DEFENSE COUNSEL, OFFICE OF MILITARY COMMISSIONS

Washington, DC, November 14, 2005.

Re Amendment No. 2515 of National Defense Authorization Act for Fiscal Year 2006.

Hon. JEFF BINGAMAN,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR BINGAMAN: I am the Chief Defense Counsel for the Office of Military Commissions. Please note that I am writing in my capacity as Chief Defense Counsel for the Office of Military Commissions and I do not purport to speak for the Department of Defense.

Please accept my congratulations for your arguments in opposition to certain portions of Amendment No. 2515. I also wholeheartedly endorse your proposal to eliminate detainees being tried by military commission from the class of detainees whose access to habeas relief would be abolished. I am writing to provide specific legal support for some of the points you raised in your debate with Senator Graham and to point out some of the specific errors in Senator Graham's arguments.

In his initial floor speech supporting the Amendment, Senator Graham stated, ''Never in the history of the law of armed conflict has an enemy combatant, irregular component, or POW been given access to civilian court systems to question military authority and control, except here.'' 151 Cong. Rec. S12656 (daily ed. Nov. 10, 2005). That claim simply is not true. As discussed in greater detail below, the Supreme Court considered habeas petitions filed on behalf of seven of the eight would-be German saboteurs in Ex parte Quirin, 317 U.S. 1 (1942), and on behalf of a Japanese general who was a prisoner of war in In re Yamashita, 327 U.S. 1 (1946). Senator Graham also described Ex parte Quirin by stating, ''We had German POWs who tried to come into Federal court, and our court said: As a member of an armed force, organized against the United States, you are not entitled to a constitutional right of habeas corpus.'' 151 Cong. Rec. at S12663. In fact, the Supreme Court said nothing of the sort. Rather, the Court said almost the exact opposite. Again, Senator Graham erred when he stated that ''[i]t has been the history of the law of armed conflict that when you have somebody tried for a violation of law of armed conflict, you don't go to Federal court.'' Id. at S12664.

Contrary to Senator Graham's arguments, the Supreme Court bas held repeatedly held that enemy combatants can pursue federal habeas litigation to challenge their susceptibility to trial by military commission. In Ex parte Quirin, which dealt with the trial of the would-be German saboteurs who were captured in 1942, the Supreme Court considered the merits of the enemy combatants' habeas petition. Ex parte Quirin, 317 U.S. 1 (1942). While the Court ultimately denied the petitioners' applications for leave to file petitions for habeas corpus, the Court specifically observed that neither President Roosevelt's military order convening the commission ''nor the fact that they are enemy aliens forecloses consideration by the courts of petitioners' contentions that the Constitution and laws of the United States constitutionally enacted forbid their trial by military commission.'' Id. at 25 (emphasis added). Quirin has been celebrated for giving the individuals the right to file such habeas corpus petitions, even though the President had tried to bar it. See. e.g., Louis Fisher, Nazi Saboteurs on Trial 173 (2003).

In re Yamashita similarly involved an application for leave to file a petition for writ of habeas corpus with the Supreme Court. 327 U.S. 1 (1946). General Yamashita, who had commanded the Imperial Japanese Army's Fourteenth Army Group in the Philippines, was tried by a U.S. Army military commission, found guilty, and sentenced to death. Id. at 5. After unsuccessfully seeking a writ of habeas corpus from the Supreme Court of the Philippine Islands, Yamashita sought both a writ of certiorari and an original writ of habeas corpus from the United States Supreme Court. Citing Ex parte Quirin, the Supreme Court reemphasized that in considering such a request for habeas relief arising from trial by military commission, ''[w]e consider . . . only the lawful power of the commission to try the petitioner for the offense charged.'' Id. at 8. So, while the Supreme Court emphasized the limited scope of review, it reemphasized that the federal courts we available to consider habeas petitions filed by enemy combatants challenging trial by military commission. In language specifically relevant to the debate over Amendment No. 2515, the Supreme Court observed, ''The courts may inquire whether the detention complained of is within the authority of those detaining the petitioner.'' Id. The Court added: ''Finally, we held in Ex parte Quirin, [317 U.S. at] 24, 25, as we hold now, that Congress by sanctioning trials of enemy aliens by military commission for offenses against the law of war had recognized the right of the accused to make a defense. Cf Ex: parte Kawato, 317 U.S. 69. It has not foreclosed their right to contend that the Constitution or laws of the United States withhold authority to proceed with the trial. It has not withdrawn, and the Executive branch of the Government could not, unless there was suspension of the writ, withdraw from the courts the duty and power to make such inquiry into the authority of the commission as may be made by habeas corpus.''

Id. at 9. In fact, in his dissent Justice Murphy went out of his way to praise the majority for doing exactly the opposite of what Senator Graham said—for providing the unlawful combatants the right to habeas corpus: ''This Court fortunately has taken the first and most important step toward insuring the supremacy of law and justice in the treatment of an enemy belligerent accused of violating the laws of war. Jurisdiction properly has been asserted to inquire ''into the cause of restraint of liberty'' of such a person. 28 U.S.C. §452. Thus the obnoxious doctrine asserted by the Govermnent in this case, to the effect that restraints of liberty resulting trom military trials of war criminals are political matters completely outside the arena of judicial review, has been rejected fully and unquestionably. This does not mean, of course, that the foreign affairs and policies of the nation are proper subjects of judicial inquiry. But when the liberty of any person is restrained by reason of the authority of the United States the writ of habeas corpus is available to test the legality of that restraint, even though direct court review of the restraint is prohibited. The conclusive presumption must be made, in

this country at least, that illegal restraints are unauthorized and unjustified by any foreign policy of the Government and that commonly accepted juridical standards are to be recognized and enforced. On that basis judicial inquiry into these matters may proceed within its proper sphere.''

In re Yamashita, 327 U.S. at 30 (Murphy, J., dissenting).

Additionally, in response to a point made by Senator Levin, Senator Graham stated: ''Here is the one thing I can tell you for sure as a military lawyer. A POW or an enemy combatant facing law of armed conflict charges has not been given the right to habeas corpus for 200 years because our own people in our own military facing court-martials, who could be sentenced to death, do not have the right of habeas corpus.

Again, Senator Graham's argument is factually incorrect. U.S. servicemembers do have a right to challenge court-martial proceedings through habeas petitions, in addition to the direct appeal rights provided by Articles 66, 67, and 67a of the Uniform Code of Military Justice. In Burns v. Wilson, which was a habeas challenge to an Air Force capital court-martial, the Supreme Court observed: ''In this case, we are dealing with habeas corpus applicants who assert—rightly or wrongly—that they have been imprisoned and sentenced to death as a result of proceedings which denied them basic rights guaranteed by the Constitution. The federal civil courts have jurisdiction over such applications.'' Burns v. Wilson, 346 U.S. 137, 139 (1953) (plurality opinion). Interestingly, in reaching this conclusion, the Supreme Court cited In re Yamashita, 327 U.S. 1, 8 (1946), thus drawing a historical parallel to the right of a U.S. servicemember to seek a writ of habeas corpus and the right of an enemy combatant detained by the United States military to do the same. Federal courts continue to review habeas challenges to court-martial convictions and occasionally grant relief. See, e.g., Monk v. Zelez, 901 F.2d 885 (10th Cir. 1990) (ordering petitioner's release from the United States Disciplinary Barracks due to constitutionally-deficient reasonable doubt instruction); Dodson v. Zelez, 917 F.2d 1250 (10th Cir. 1990) (finding a due process violation where the military judge's sentencing instructions did not require the members to reach a three-fourths majority vote in order to impose life imprisonment).

An important policy consideration also suggests the need to reassess the amendment. In its current form, Amendment No. 2515 would provide detainees seeking review of Combatant Status Review Tribunals (CSRTs) with greater access to federal courts than a detainee who has been sentenced to imprisonment for life, or even death, by a military commission. This result is anomalous for two reasons. First, generally due process protections increase in direct proportion to the magnitude of the interest at stake. Because military commissions are literally empowered to take a life, the recourse to Article III courts for those sentenced by these tribunals should be at least equal to that of individuals who are merely challenging their susceptibility to continued detention. Second, the burden on the federal judiciary is far greater in the case of review of CSRTs than the review of commission proceedings. During the floor debate, Senator Graham noted that there are currently 160 habeas petitions filed by or on behalf of Guantanamo detainees pending in federal courts. But only three individuals being tried by military commissions have filed habeas petitions challenging those trials. The total number of individuals with approved charges before military commissions is only nine. There can be little doubt that nowhere near 160 of the Guantanamo detainees will ever face trial by military commission. Accordingly, while the federal courts' burden of resolving habeas challenges to continued detention might be large, the burden of resolving habeas challenges to military commission proceedings will be quite minimal. The resources that will be devoted to the District of Columbia Circuit's review of CSRTs will likely dwarf the resources that would be necessary to litigate every habeas petition that has or will be filed by an accused before a military commission.

I will be happy to provide any additional information that might be helpful. You can reach me at my office, at home, or by e-mail. Unfortunately, I am currently scheduled to leave for Guantanamo Bay on the morning of Tuesday, November 15. If you or a member of your staff would like to reach me after today, please leave a voice mail on my work phone and I will return your call.

Very Respectfully,

DWIGHT H. SULLIVAN,
Colonel, USMCR, Chief Defense Counsel, Office of Military Commissions.

Mr. BINGAMAN. How much time remains of the 15 minutes I am allotted?

The PRESIDING OFFICER. One minute.

Mr. BINGAMAN. I retain that minute and yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM. Mr. President, I will be glad to get a letter from the prosecutor at the military commission about the procedures. I will bet $100 he will say they are great. The point is, we are talking about two different things. My amendment is designed to get us back to what we have been doing for a couple hundred years. What I am concerned about is that an enemy prisoner, not someone charged with a crime, is having access to Federal courts to sue our own troops about the food, about the mail, about whether they should have Internet access, about whether they should get DVDs. There are 160 lawsuits now in Federal court suing to stop interrogations unless a Federal judge oversees the interrogation.

Never in the history of the law of armed conflict has a military prisoner, an enemy combatant, been granted access to any court system, Federal or otherwise, to have a Federal judge come in and start running the prison and determining what is in bounds and what is out. The military is the proper body to determine who an enemy combatant is and how to run a war and how to interrogate people, not Federal judges who are not trained in the art of military science.

Here is what these lawsuits are about. Here is why I am so adamant that we stop it. No. 1, what are we stopping? We are not stopping a constitutional right that exists under our law for an enemy prisoner in our hands to be able to question their detention through Federal court action. There is no constitutional right under habeas corpus in American jurisprudence for an enemy prisoner to go to Federal court and challenge whether they should have Internet access or DVD access, all the other things they are suing the people for, medical malpractice. That has never been the case. None of the Germans in World War II who were housed in the United States, and the Japanese prisoners, were allowed to go to Federal judge to come in and oversee their treatment. We don't allow that. That is not part of the law of armed conflict.

Habeas petitions are not coming from the Constitution. They are coming from an interpretation of section 2241. The Rasul case was a Supreme Court case that said that contrary to the Government's argument, Guantanamo Bay, Cuba is in the effective control of the United States, even though it is not part of our own territories. Because of the lease arrangements and because the Department of Defense is an agency covered by the jurisdiction of the Federal courts, the argument that it is outside the jurisdiction of Federal courts because of its location was defeated. That led to the decision that since you are within the control of our jurisdiction at Guantanamo Bay, section 2241 applies unless Congress says otherwise.

Here is the question I will ask every Member of this body: Does the Senate want enemy terrorists, al-Qaida members being detained at Guantanamo Bay, to have unlimited access to our Federal courts to sue our troops about the following:

A Canadian detainee, who threw a grenade that killed an American Army medic in a firefight and who comes from a family of longstanding al-Qaida ties, moves for preliminary injunction forbidding interrogation of him or engaging in cruel, inhumane, or degrading treatment of him. That was a lawsuit brought in a Federal court by a person who blew up one of our medics, who wanted a Federal judge to supervise his military interrogation. If we start doing that, we might as well close Guantanamo Bay down.

These are not people being charged. They are being kept off the battlefield because they have been captured on the battlefield, and they have been labeled enemy combatants. The procedures I am trying to get in place will comply with the law of armed conflict. Twelve of the people have been let go at Guantanamo Bay. Over 200 in total have been let go. They have been found no longer to have intelligence value or to be a threat to the United States. Once those two determinations are made, they are let go, even if they are an enemy combatant. Twelve of them have been recaptured. A couple of them have been killed. They have gone back to the fight.

The people at Guantanamo Bay are captured as part of the war on terror, and some of them may be running. The point is, when you join al-Qaida, whether you stand or fight or run, you have lost your rights to be considered anything other than what you are—an enemy combatant taking up arms against the United States.

Here is my message to the terrorists: If you join a terrorist organization taking up arms against the United States and you get involved in combat, you are likely to get killed. If you get captured, you will be taken off the battlefield as long as necessary to make sure our country is protected from you.

Under the law of armed conflict, there is no right to try them or let them go. Shaikh Mohammed, the mastermind of 9/11, is in U.S. control right now. He is not a criminal, but you have to charge within 90 days or let go. He is an enemy combatant, the mastermind of 9/11, and 9/11 was an act of war. It was not a crime. The law of war needs to apply. Anybody who suggests that Shaikh Mohammed should have unlimited access to the Federal courts to get a Federal judge to supervise his interrogation is fundamentally changing the law of war and making us less safe. He will not be let go. If you don't want to be captured and detained for a long time, don't join al-Qaida.

Listen to this: Kuwaiti detainees seek court orders that they be provided dictionaries in contravention of GTMO's force protection policy and that their counsel be given high-speed Internet access at their lodging on the base and be allowed to use classified DOD telecommunications facilities, all on the theory of the right to counsel. A motion by a high-level al-Qaida detainee complaining about base security procedures, speed of mail delivery, and medical treatment, seeking an order that he be transferred to the least onerous conditions at GTMO and asking the court to order that GTMO allow him to keep any books and reading materials sent to him and to report to the court on his opportunities for exercise, communication, recreation, and worship. A man captured on the battlefield, engaged in a war against the United States, because of 2241's interpretation where Congress hasn't spoken, is petitioning a court to supervise his opportunity to exercise, communicate, recreate, and worship, and where he should be housed.

In other words, Federal judges are going to determine how we run the war, not the people fighting the war. Never in the history of warfare has an enemy prisoner been allowed to do such things. It didn't happen in World War II. Why? Because we have a right, as a country capturing enemy prisoners, to take them off the battlefield. They are not common criminals. We have an obligation to treat them humanely under the law of armed conflict.

An emergency motion seeking a court order requiring GTMO to set aside its normal security policies and show detainees DVDs that are purported to be family videos. One hundred sixty of these cases, another 40 or 50 suing our own people, one for $100 million, suing the doctor who treated the guy. This is an absurd result.

I proudly stand before the Senate asking the Senate to fix this absurd result. The court in Rasul is asking the Senate and the House, do you intend for al-Qaida terrorists, enemy combatants, to have access to Federal courts under habeas rights to challenge their detention as if they were American citizens? The answer should be, no, we never intended that. That is what my amendment does. It says to the courts and to the world that an enemy combatant is not going to have the rights of an American citizen, and we are going to stop all these lawsuits undermining our ability to protect ourselves.

What have I done in place? I have stopped a procedure that has never been granted before because it is totally out of bounds of what we need to be doing and have done. I allow Federal courts to review each enemy combatant's determination at the Circuit Court of Appeals for the District of Columbia to look at whether the combat status review tribunal, the group deciding whether you are an enemy combatant, followed the procedures and standards we set up.

What do the Geneva Conventions give our own troops, if our own troops fall into enemy hands under the Geneva Conventions? If there is a question about their status, it says a competent tribunal has the ability to challenge. The combat status review tribunal that we have set up at Guantanamo Bay since August of 2004 is Geneva Conventions protection on steroids. They have a full-blown hearing, a right every year to have their status redetermined. And what do you look at? Were they an enemy combatant engaged in armed conflict against the United States? Do they present intelligence value or a continuing threat to the United States? That determination is made every year, a full-blown adversarial process way beyond what the Geneva Conventions require in such situations.

We have added to that Federal court oversight to see if the people at Guantanamo Bay are following the rules and procedures set up in accordance with the law of armed conflict.

Senator BINGAMAN is a very fine man, a fine Senator. I deeply disagree with him. And any letter that anybody writes, I have my own letters from JAGs.

It is a simple proposition. His amendment allows unlimited habeas petitions regarding detention to come to the Circuit Court of Appeals for the District of Columbia. The type lawsuits that we see now will continue: A motion by Kuwaiti detainees unsatisfied with the Koran they are provided and want another version, a filing by a detainee requesting a stay of litigation pending related appeals, an emergency motion by a detainee accusing military health professionals of gross and intentional malpractice.

They are swamping the system. Americans are losing their day in court because somehow we have allowed enemy combatants, people who have signed up to kill us all, to take us into Federal court and sue us about everything.

That is not part of the law of armed conflict. Our troops are not going to get that right if they are in the hands of someone else. What I am asking for is for us to treat enemy combatants humanely and in accordance with the law of armed conflict. I am asking for us to provide due process in accordance with the Geneva Conventions and then some. I am even allowing a Federal court review of the process down there. But I will not now or ever sit on the sidelines and give rights to enemy combatants who have been caught on the battlefield in the war of terror the unending, endless right to think of every reason in the world to take our own troops into court. We will keep having this debate and we will keep having this argument until the cows come home because I am not going to sit on the sidelines and watch that happen.

There has never been a constitutional right for that to happen. Section 2241 is what we are talking about here. Congress wrote it. Congress has restricted habeas rights for illegal immigrants. Congress has restricted habeas rights of its own citizens numerous times because these petitions can get out of control and take over a courtroom.

The question for this Congress is whether you, after 9/11, want to give enemy combatants detained at Guantanamo Bay who have been captured on the battlefield the unlimited right to go into any Federal court in this land and to sue over everything they can think of. If you do, then we have made a huge mistake in the war on terror. I suggest that you say no to Senator BINGAMAN's amendment and get us back to where we have been for 200 years. Apply the law of armed conflict. Once you have been determined to be an enemy combatant, you get the due process of the Geneva Conventions. We have done that and then some to allow a limited Federal court review, more than anybody has ever gotten in history. We get back on track. And when it comes to military commissions and those who will be charged with the law of armed conflict violations, I am working with Senator LEVIN and others to try to find a way to get a Federal court appeal right.

How much time do I have, Mr. President?

The PRESIDING OFFICER. The Senator has 2 minutes remaining.

Mr. GRAHAM. I will try to retain 1 minute.

Let it be said that the people who attacked us on 9/11 committed an act of war, not a crime, and they are going to be tried under military commissions, not in our Federal courts, because they are engaged in a war and they are violating the law of armed conflict. They will get their day in court and we will come up with a fair process to make sure they have their day in court, but we are not going to take a war and turn it into a crime.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, let me use the remaining 1 minute I have and then I will ask permission to speak for another 4 minutes, if possible.

Let me say that I think the Senator obviously hasn't read the amendment I have offered. The amendment I have offered makes it very clear that the Federal court is available only to hear claims regarding whether the determination of the combat status review tribunal is consistent with the procedures and standards specified by the Department of Defense, whether the status determination was supported by sufficient evidence, and to determine the lawfulness of the detention of the alien. They are not permitted under my amendment to consider whether the DVDs are the ones that the prisoner would like. They are not permitted to consider whether the peanut butter is the peanut butter the prisoner would like, or anything else.

To try to trivialize this debate by suggesting that is what we are talking about I think does a disservice to the issue.

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

Mr. BINGAMAN. Mr. President, I ask unanimous consent to speak for an additional 4 minutes as if in morning business.

The PRESIDING OFFICER. Is there objection?

Mr. GRAHAM. I don't mind if the Senator wants 4 more minutes to speak on his amendment.

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

Mr. BINGAMAN. I appreciate my colleague's courtesy.

Mr. President, first let me say we have a real difference of opinion here as to what has been the law of this land for the last couple hundred years.

The Senator from South Carolina continues to say we have never recognized a right for people in conflict, armed conflict, to petition for habeas corpus. The truth is we have. The truth is the Supreme Court has—in the Ex parte Quirin case, the In re Yamashita case. There are a variety of cases where this has been the case. The Supreme Court has repeatedly held that enemy combatants can pursue Federal habeas litigation to challenge that you are susceptible to trial by military commission. It is very clear that that right has been there.

All I am trying to do is to be sure we do not strip the courts of the right to consider these types of petitions. If we strip the courts of the right to consider petitions in these cases, how many other areas can we find where we will deny people within the jurisdiction of our Federal court system the right to proceed with a petition for habeas corpus in the Federal judiciary?

This is the most fundamental right any of us can conceive of. When you start talking about imprisoning a person and not allowing that person any opportunity to have a court review of the legality of that imprisonment, you are talking about the most fundamental of rights.

Unfortunately, that is what the amendment by Senator GRAHAM would do. It would deny that right. It would be an unfortunate act by this Congress. It would be an extraordinary act by this Congress to do that, and I believe would be very contrary to the traditions this country was built on. I strongly urge my colleagues to support the amendment I have offered which maintains the right to petition for habeas corpus on the part of everybody because there is nothing in our Constitution, there is nothing in the history and tradition of this country that says this is only available for citizens. It is available for all individuals who become imprisoned within the confines of the United States and within the jurisdiction of the Federal courts. Our Department of Defense tried to locate these prisoners outside the jurisdiction of Federal courts and put them in Guantanamo and it argued to the Federal court they are now outside your jurisdiction, and the Federal court said, no, they are not. The United States Government is the sovereign in Guantanamo. We have a 100-year lease on that property, we operate that facility, and we are responsible for the treatment of those individuals.

So the Federal courts have authority to look at whether the detentions that occur there are legal or illegal. That is the law as it has always been in this country. That is the law today. We should not change that by allowing the Graham amendment to remain as it is. We need to adopt a refinement of that amendment, an improvement of that amendment, and that is the second-degree amendment I have offered at this point.

Mr. President, I will yield the floor. I think my colleague wants to respond.

Mr. GRAHAM. If I may have the same courtesy and have 4 minutes.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM. No. 1, we have a fundamental difference. I do not want everyone to have habeas rights. I do not want the enemy combatant al-Qaida terrorist to be able to go in our courts and start to sue our own troops. I don't want it. I don't think people in this body want it. I do not think the American people want it. I want al-Qaida members to be detained in armed conflict. They should not have due process rights beyond what the Geneva Conventions ever envisioned.

As to Senator BINGAMAN's amendment, he talks about they can't base claims on living conditions, but listen to this: Whether the status determination was supported by sufficient evidence and reached in accordance with due process of law, provided that statements obtained through undue coercion, torture, or cruel or inhuman treatment may not be used as a basis for the determination, and consideration of lawfulness of the detention of such alien. You could drive an army of trucks through those legal exceptions. What it would do is legitimize this request by a Canadian detainee, who threw a grenade and killed an American medic, in moving for a preliminary injunction forbidding the interrogation of him or engaging in cruel, inhumane, or degrading treatment of him. In other words, under this amendment, that claim stands. He could come in and ask a Federal judge: I want you sitting there while they interrogate me. And we are turning the war away from military people to Federal judges. We can't do that. We will compromise our own defense, our own freedom.

As to the people at Guantanamo Bay who are going to be charged with a crime, I am working with Senator LEVIN to come up with a military commission model we all can be proud of. There are 490 enemy combatants down there who are not going to be charged with crimes, and if we allowed them unfettered freedom to have courts, to have judges control military interrogation and get into the bowels of running this war—not only has it never been done, but I challenge anybody to bring one case down here where an enemy prisoner has been able to go into Federal court and complain about their detention. Once you have a combatant charged with a crime, you are working with 490 of them who are going to have unfettered access under 2241 unless Congress acts. If you want to stop this kind of litigation and not turn over the war to Federal judges, then you need to tell the courts that 2241 does not apply. No law in the history of armed conflict has allowed this to happen and it needs to not happen now. Twelve people have been released down there under the procedures we already have, and they have gone back to try to kill us.

Nothing is perfect. Nothing is perfect. We may let some people go who go back to the fight, but what we are going to do is we are going to have a process we can be proud of that fairly determines who an enemy combatant is and who is not following the Geneva Conventions law of armed conflict. We are not going, with my amendment, to turn the al-Qaida member into an American citizen suing us for anything they can think of about due process of law and as to where they have been detained.

This is a fundamental moment in terms of values in the law of armed conflict. The American value system is being maintained by due process and then some. The American value system that you can allow people who are trying to kill you unfettered access to the Federal courts to sue your own troops—if that becomes our value, we are going to lose this war.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I yield 6 minutes to the Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I thank the Senator from Michigan.

In March 2003, the brave men and women of our Armed Forces were sent into war in Iraq. Now, over 2½ years later, that war continues and those brave men and women are waiting for what they should have gotten long ago—a clear, realistic military mission with a flexible timetable for achieving that mission. And, of course, that timetable has to include a plan for withdrawing our troops from Iraq when their mission is done.

On Tuesday, the Senate can start to put our Iraq policy on the right course by demanding a public plan and a flexible timetable for achieving our military goals and bringing our troops home. The absence of any kind of timetable is not fair to our troops and their families. It is making the American people increasingly anxious. And it is hurting, not helping, our Iraq policy and our broader national security strategy.

Why is it hurting us? Well, for one thing, the perception that U.S. troops will be there indefinitely discourages Iraqi ownership of the political process. It also fuels the insurgency, which thrives on conspiracy theories about our intentions and presence in Iraq. The failure to put forth a timetable is helping the recruitment of foreign fighters and unifying elements of the insurgency that might otherwise turn on each other. Former Republican Defense Secretary and Wisconsin Congressman Melvin Laird recognized that when he said that ''our presence is what feeds the insurgency.'' GEN George Casey recognized that when he said that the perception of occupation in Iraq ''fuels the insurgency.'' So did one of the top military commanders I spoke with in Iraq, who told me off the record that nothing would take the wind out of the sails of the insurgents more than a public timetable for finishing the mission.

Drawing down our troops in Iraq is also essential if we are going to prevent the U.S. army from being hollowed out and ensure our military readiness. And it is essential if we are going to make sure that our Iraq policy is consistent with our broader national security priority—going after the global terrorist networks that threaten the U.S. Despite the administration's desperate efforts to link them, Iraq has been a dangerous and self-defeating diversion from that central fight against global terrorism.

Unfortunately, the President is one of the dwindling group of people who don't support a timetable. They argue that a timetable will embolden the insurgency. Actually, it will undermine the insurgency. They argue that fighting insurgents in Iraq means we won't have to fight them elsewhere. That is just wishful thinking, of course—the idea that all of our terrorist enemies will be irresistibly drawn to Iraq like bees to honey doesn't make a whole lot of sense. They argue that the insurgents will wait us out if we have a timetable. Of course, the insurgents could do that now if that is what they wanted—lay low and wait until we leave. They argue that if we leave prematurely, Iraq will fall into chaos. The only problem is that the insurgency isn't letting up and there is not much expectation it will, as long as our troops remain with no endgoal in sight.

For months, I have been calling on the President to provide a flexible, public timetable for our mission in Iraq. I am not calling for a rigid timetable—I mean one that is tied to clear and achievable benchmarks, with estimated dates for meeting those benchmarks. Today, I am pleased to join with some of my distinguished colleagues in the Senate in offering an amendment that demands just that. I hope that the Senate will finally tell the administration that ''stay the course'' isn't a strategy for success—it is not even a strategy. We need to correct the course we are on. To do that, we need openness, we need honesty, and we need clarity about our military mission in Iraq. The American people, and our troops in Iraq, have been waiting for that for far too long. We can't afford to wait any longer.

I yield the floor.

Mr. GRAHAM. Mr. President, I ask unanimous consent to have letters in support of my amendment printed in the RECORD.

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

Birmingham, AL, November 13, 2005.

Hon. LINDSEY O. GRAHAM,
c/o Ms. Meredith Beck, U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR GRAHAM: Congratulations on your success in obtaining Senate adoption of your amendment (Senate Amendment 2516 to S. 1042) to restrict the ability of terrorist detainees held at Guantanamo, to gain access to the U.S. Districts Courts through habeas corpus applications.

I understand that Amendment opponents will make an effort on Monday, November 14, to remove the habeas corpus restrictions in the Amendment so that detainees can continue to contest various issues regarding their detention and the conduct of the Global War on Terror in the U.S. Federal Court System.

While I strongly support Senator McCain's efforts to prohibit cruel and degrading treatment against detainees in American custody, I am not in favor of granting detainees' access to our civilian court system. There are effective and adequate procedures for detainees to question their status through the Combatant Status Review Tribunal and the Administrative Review Board without granting aliens outside the United States access to our federal civilian courts.

I urge you to make the strongest effort possible to resist efforts to weaken your amendment. If the habeas restrictions are removed we can expect a logjam of litigation with the attendant adverse effects on our ability to gather intelligence and prosecute the Global War on Terrorism.

Very Respectfully,

ROBERT W. NORRIS,
Major General, USAF (Ret.).

NOVEMBER 14, 2005.

Hon. LINDSEY O. GRAHAM,
c/o Ms. Meredith Beck, U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR GRAHAM: I support your efforts to keep Senate Amendment 2516 (the ''Amendment'') in S. 1042, the FY 06 National Defense Authorization Act.

Habeas corpus applications, brought on behalf of terrorist—Guantanamo detainees, to which the Amendment will put a stop, have become a means to advance efforts to frustrate the Global War on Terror. The detainees appear to have become secondary to anti-war efforts.

On the Senate floor, during last Thursday's debate on the Amendment, you appropriately cited the Michael Ratner interview in Mother Jones Magazine (The Torn Fabric of the Law: An Interview with Michael Ratner, Mother Jones Magazine, March 21, 2005.) I read Mr. Ratner's interview and I note that, to him, the disruptive results of litigation brought against the United States (under the guise of habeas corpus applications) appear to be more important than his detainee—clients. ''While we may not be having many victories in freeing people, we're winning heavily in the litigation.'' That litigation, according to Mr. Ratner, as you pointed out,

''. . . is brutal for them [the United States]. It's huge. We have over one hundred lawyers now from big and small firms working to represent these detainees. Every time an attorney goes down there, it makes it that much harder to do what they're [the United States] doing. You can't run an interrogation and torture camp with attorneys. What are they [the United States] going to do now that we're getting court orders to get more lawyers down there?''

Thank you for your strong efforts made in securing adoption of the Amendment and in its preservation.

Thank you for your time and interest.

Very respectfully,

EDWARD F. RODRIGUEZ, Jr.,
Brig. Gen., USAFR (Ret.),
Air Force Judge Advocate '70–'99.

NOVEMBER 13, 2005.

Hon. LINDSEY O. GRAHAM,
c/o Ms. Meredith Beck, U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR GRAHAM: I write to support Senate Amendment 2516 (the ''Amendment'') to S. 1042, the FY 06 National Defense Authorization Act.

You proposed the Amendment to restrict the ability of Global War on Terror detainees, held at Guantanamo, to gain access to US District Courts through habeas corpus applications, among other things. On Thursday, November 10, you succeeded in persuading the Senate to adopt the Amendment by a vote of 49 to 42.

I understand that, when the Senate reconvenes on Monday, November 14, the Amendment's opponents will make a strong effort to strip away the habeas restriction. That will enable detainees to continue to contest all manner of issues related to their detention and the conduct of the Global War on Terror in the US civilian court system.

Detainees have ample opportunity to contest their combatant status through the Combatant Status Review Tribunal (''CSRT'') process, especially now since other provisions of the Amendment provide for the exclusion of statements made under undue coercion and for the appeal of adverse CSRT rulings to the US Court of Appeals for the DC Circuit.

I urge you to hold fast and to prevent any watering down of the Amendment. If the habeas restriction is struck from the Amendment, then the pending 160 habeas applications will be only the tip of the iceberg. This

is a true ''floodgates of litigation'' scenario. This is no way to run a terrorist detention facility and a war against foreign terrorists attacking our security. It would be a significant setback in our resolve to defeat terrorists who do not respect human rights and the rule of law.

It is ironic that we would knowingly facilitate foreign terrorists to have access to our Constitutional safeguards to condemn and attack them. The Constitutional safeguards and rights that we have and protect should not be a tool for foreign terrorists.

Thank you for your strong efforts made in securing adoption or the Amendment and in its preservation.

Very Respectfully,

BOHDAN DANYLIW,
Brig. Gen., USAF (Ret), Former Command Judge Advocate Air Force Systems Command.

NOVEMBER 12, 2005.

Hon. LINDSEY O. GRAHAM,
c/o Ms. Meredith Beck, U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR GRAHAM: Please know I support Senate Amendment 2516 (the ''Amendment'') to S. 1042, the FY 06 National Defense Authorization Act. The Amendment restricts the ability of Global War on Terror detainees, held at Guantánamo, to gain access to U.S. District Courts through habeas corpus applications, among other things. Yesterday the Senate adopted the Amendment by a vote of 49 to 42. However. I suspect this is not the end of the matter. The Amendment's opponents will most likely undertake efforts to strip away the habeas restriction so that detainees can continue to contest, in the U.S. civilian court system, every conceivable issue related to their detention and the conduct of the Global War on Terror.

Detainees have ample opportunity to contest their combatant status through the Combatant Status Review Tribunal (''CSRT'') process. This is especially true now, since other provisions of the Amendment provide for the exclusion of statements made under undue coercion and for tbe appeal of adverse CSRT rulings to the U.S. Court of Appeals for the DC Circuit.

I urge you to hold fast and to prevent any watering down of the Amendment. If the habeas restriction is struck from the Amendment, then the pending 160 habeas applications will be only the tip of the iceberg—a true ''floodgates of litigation'' scenario. This is no way to run a terror detention facility, much less a war.

Thank you for your strong efforts in securing adoption of the Amendment and in its preservation.

Very respectfully,

NOLAN SKLUTE,
Major General, USAF (Ret.).

LAW OFFICES OF
DRIANO & SORENSON,
Seattle, WA, November 11, 2005.

Hon. LINDSEY O. GRAHAM,
c/o Ms. Meredith Beck, U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR GRAHAM: I write to support Senate Amendment 2516 (the ''Amendment'') to S. 1042, the FY 06 National Defense Authorization Act.

You proposed the Amendment to restrict the ability of Global War on Terror detainees, held at Guantánamo, to gain access to U.S. District Courts through habeas corpus applications, among other things.

Yesterday, you succeeded in persuading the Senate to adopt the Amendment by a vote of 49 to 42.

I understand that, when the Senate reconvenes on Monday the Amendment's opponents will make a strong effort to strip away the habeas restriction so that detainees can continue to contest all manner of issues related to their detention and the conduct of the Global War on Terror in the U.S. civilian court system.

Detainees have ample opportunity to contest their combatant status through the Combatant Status Review Tribunal (''CSRT'') process, especially now since other provisions of the Amendment provide for the exclusion of statements made under undue coercion and for the appeal of adverse CSRT rulings to the U.S. Court of Appeals for the DC Circuit.

I urge you to hold fast and to prevent any watering down of the Amendment. If the habeas restriction is struck from the Amendment, then the pending 160 habeas applications will be only the tip of the iceberg. This is a true ''floodgates of litigation'' scenario. This is no way to run a terror detention facility, much less a war.

Thank you for your strong efforts made in securing adoption of the Amendment and in its preservation.

Very respectfully,

DOMINICK V. DRIANO,
Brig. Gen., USAF (Ret.).

NOVEMBER 11, 2005.

Hon. LINDSEY O. GRAHAM,
c/o Ms. Meredith Beck, U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR GRAHAM: I write to support Senate Amendment 2516 (the ''Amendment'') to S. 1042, the FY 06 National Defense Authorization Act.

You proposed the Amendment to restrict the ability of Global War on Terror detainees, held at Guantánamo, to gain access to U.S. District Courts through habeas corpus applications, among other things.

Yesterday, you succeeded in persuading the Senate to adopt the Amendment by a vote of 49 to 42.

I understand that, when the Senate reconvenes on Monday, the Amendment's opponents will make a strong effort to strip away the habeas restriction so that detainees can continue to contest all manner of issues related to their detention and the conduct of the Global War on Terror in the U.S. civilian court system.

Detainees have ample opportunity to contest their combatant status through the Combatant Status Review Tribunal. (''CSRT'') process, especially now since other provisions of the Amendment provide for the exclusion of statements made under undue coercion and for the appeal of adverse CSRT rulings to the U.S. Court of Appeals for the D.C. Circuit.

I urge you to hold fast and to prevent any watering down of the Amendment. If the habeas restriction is struck from the Amendment, then the pending 160 habeas applications will be only the tip of the iceberg. This is a true ''floodgates of litigation'' scenario. This is no way to run a terror detention facility, much less a war.

Thank you for your strong efforts made in securing adoption of the Amendment and in its preservation.

Very respectfully,

WALTER A. REED,
M. Gen. USAF (Ret), AF Judge Advocate General (1977–1980).

NOVEMBER 14, 2005.

Hon. LINDSEY O. GRAHAM,
c/o Ms. Meredith Beck, U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR GRAHAM: A world in which non-state actors engaged in terrorist activities can be our greatest security threat requires legal mechanisms that allow us to deal effectively with these threats while remaining true to our values. I believe Senate Amendment 2516 to S. 1042 accomplishes these purposes.

When I was a Military Judge during the Viet Nam conflict, a defense counsel who regularly appeared before me said that he loved military juries. They always followed orders, and he said that when a judge told a court to acquit if there was reasonable doubt, they did their duty and would acquit regardless of how difficult that decision might be. The CSRT assures that detainee status decisions will be made by persons with both the backbone, and the background, to get it right. Simply stated, the members of the CSRT are in the best position to make the necessary findings, and any review process must take this into account.

Establishing the D.C. Circuit as the singular court for review of CSRT decisions will promote consistency and fairness. Similarly, the exclusion of statements made under undue coercion promotes the integrity of the decision process and is consistent with our core values.

I am pleased to offer my support for the Amendment.

Sincerely,

GILBERT J. REGAN,
Brig. Gen. USAF (Ret.).

NOVEMBER 11, 2005.

Hon. LINDSEY O. GRAHAM,
c/o Ms. Meredith Beck, U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR GRAHAM: I write to support Senate Amendment 2516 (the ''Amendment'') to S. 1042, the FY 06 National Defense Authorization Act.

You proposed the Amendment to restrict the ability of Global War on Terror detainees, held at Guantánamo, to gain access to U.S. District Courts through habeas corpus applications, among other things.

Yesterday, you succeeded in persuading the Senate to adopt the Amendment by a vote of 49 to 42.

I understand that, when the Senate reconvenes on Monday, the Amendment's opponents will make a strong effort to strip away the habeas restriction so that detainees can continue to contest all manner of issues related to their detention and the conduct of the Global War On Terror in the U.S. civilian court system.

Detainees have ample opportunity to contest their combatant status through the Combatant Status Review Tribunal (''CSRT'') process, especially now since other provisions of the Amendment provide for the exclusion of statements made under undue coercion and for the appeal of adverse CSRT rulings to the U.S. Court of Appeals for the D.C. Circuit.

I urge you to hold fast and to prevent any watering down of the Amendment. If the habeas restriction is struck from the Amendment, then the pending 160 habeas applications will be only the tip of the iceberg. This is a true ''floodgates of litigation'' scenario. This is no way to run a terror detention facility, much less a war.

Thank you for your strong efforts made in securing adoption of the Amendment and in its preservation.

Very respectfully,

OLAN G. WALDROP, JR.,
Brig. Gen., USAF (Retired).

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I ask unanimous consent that in the absence of a speaker on the Republican side, the time between now and 4:30 p.m. be divided as follows: the Senator from Massachusetts be recognized for 30 minutes, then the Senator from Connecticut be recognized for 10 minutes. If, during that period, the floor manager on the Republican side indicates

time is required on the Republican side, we would then do our best to make arrangements for that to happen, perhaps delaying the 4:30 p.m. timetable. We are trying to accommodate two Senators, the Senator from Massachusetts, who needs a half hour, and the Senator from Connecticut, who needs 10 minutes.

Mr. GRAHAM. So I have to pick whom I like best?

Mr. LEVIN. We are trying to accommodate colleagues and make sure you are protected. I suggest the following: the Senator from Massachusetts speak for a half hour; the Senator from Connecticut speak for 10 minutes, unless the Senator from South Carolina knows of someone on his side; and then if our people or a person on their side, Mr. President, needs some time, the 4:30 p.m. shift to the appropriations bill be delayed by 5 or 10 minutes to accommodate the Republican side. I can't think of anything better without knowing exactly who wants to speak.

Mr. GRAHAM. I agree.

Mr. LEVIN. Mr. President, I ask unanimous consent that the Senator from Massachusetts be recognized for 30 minutes, the Senator from Connecticut for 10 minutes, and the remainder of the time between now and 4:30 p.m. not be assigned at this time, and we will do our best to accommodate the Republican side should there be speakers after the Senator from Connecticut speaks.

The PRESIDING OFFICER. Is there objection?

Mr. GRAHAM. No.

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

The Senator from Massachusetts.

Mr. KERRY. Mr. President, I thank the managers, particularly Senator GRAHAM and Senator LEVIN.

Veterans Day is a very special day in our country's history. There are a lot of veterans who believe Veterans Day is just plain sacred—a lot of families, Gold Star mothers, wives for whom it is a day set aside to memorialize the unbelievable sacrifice of generations of Americans who have given themselves for our country. Veterans Day is sacred. It is a day to honor veterans, not a day to play attack politics. The President, who is Commander in Chief, should know and respect this.

Veterans Day originally marked the 11th hour of the 11th day of the 11th month when the guns of World War I, the war to end all wars, finally fell silent. Instead of honoring that moment, instead of laying a wreath at the Tomb of the Unknown Soldier at Arlington, instead of laying out a clear plan for success in Iraq, the President laid into his critics with an 11th hour rhetorical assault that I believe dishonors that day and does a disservice to veterans and to those serving today. He did so even as he continued to distort the truth about his war of choice.

Perhaps most striking of all is that his almost desperate sounding Veterans Day attack on those who have told the truth about his distortion was itself accompanied by more distortion. Does the President really think the many generals, former top administration officials, and Senators from his own party who have joined over two-thirds of the country in questioning the President's handling of the war in Iraq—are they all unpatriotic, too? This is America, a place where we thrive on healthy debate. That is something we are trying to take to Afghanistan and Iraq. It is something we are trying to export to the rest of the world. The President does not have a monopoly on patriotism, and this is not a country where only those who agree with him support the troops or care about defending our country.

You can care just as much about defending our country and have just as much support for the troops by being a critic of policies. No matter what the President says, asking tough questions is not pessimism, it is patriotism. And fighting for the right policy for our troops sends them exactly the right message that all of us here take very seriously the decision to put them in harm's way and that our democracy is alive and well.

Ironically, the President even used the solemn occasion of Veterans Day to continue his campaign of misrepresenting the facts and throwing up smokescreens. His statement that Democrats saw and heard the same intelligence he did is just flat-out untrue, unless, of course, the President and the administration did not do their job and study the additional intelligence given only to them and not the Congress.

As the Washington Post said on Saturday, Bush and his aides had access to much more voluminous intelligence information than lawmakers who were dependent on the administration to provide the material. But that whole discussion is nothing more than an effort to distract attention from the issue that matters most and can be answered most simply: Did the administration go beyond what even the flawed intelligence would support in making the case for war? Did they use obviously inaccurate intelligence, despite being told clearly and repeatedly not to? Did they use the claims of known fabricators and rely on those claims of known fabricators? The answer to each and every one of these questions is yes. The only people who are now trying to rewrite that history are the President and his allies.

There is no greater breach of the public trust than knowingly misleading the country into war. In a democracy, we simply cannot tolerate the abuse of this trust by the Government.

To the extent this occurred in the lead-up to the war in Iraq, those responsible must be held accountable. That is precisely why Democrats have been pushing the Senate Intelligence Committee to complete a thorough and balanced investigation into the issue. When the President tried to pretend on Friday that the Intelligence Committee had already determined that he had not manipulated intelligence and misled the American public, he had to have known full well they have not yet reported on that very question. That is precisely why Democrats were forced to shut down the Senate in secret session and go into that secret session in order to make our colleagues on the other side of the aisle take this issue seriously.

When the President said his opponents were throwing out false charges, he knew all too well that these charges are anything but false. But the President and the Republicans seem far more interested in confusing the issue and attacking their opponents than in getting honest answers.

Let's be clear, Mr. President, let's be clear, my fellow Americans: There is no question that Americans were misled into the war in Iraq. Simply put, they were told that Saddam Hussein had weapons of mass destruction when he did not. The issue is whether they were misled intentionally.

Just as there is a distinction between being wrong and being dishonest, there is a fundamental difference between relying on incorrect intelligence and making statements that you know are not supported by the intelligence.

The bottom line is that the President and his administration did mislead America into war. In fact, the war in Iraq was and remains one of the great acts of misleading and deception in American history. The facts are incontrovertible.

The act of misleading was pretending to Americans that no decision had really been made to go to war and that they would seriously pursue inspections when the evidence now strongly suggests that they had already decided as a matter of policy to take out Saddam Hussein, were anxious to do it for ideological reasons, and hoped that inspections, which Vice President CHENEY had opposed and tried to prevent, would not get in their way.

The President misled America about his intentions and the manner in which he would make his decision. We now know that his speech in Cincinnati right before the authorization vote was carefully orchestrated window dressing where, again, he misled America by promising, ''If we have to act, we will take every precaution that is possible, we will plan carefully, and we will go with our allies.'' We did not take every precaution possible, we did not plan—that is evident for every American to see—and except for Great Britain, we did not go in with our allies.

The act of misleading was just going through the motions of inspections while it appears all the time the President just could not wait to kick Saddam Hussein out of power. The act of misleading was pretending to Americans the real concern was weapons of mass destruction when the evidence suggests the real intent was to finish

the job his father wisely refused and remove Saddam Hussein in order to remake the Middle East for modern times.

The act of misleading was saying in a Cincinnati speech that ''approving this resolution does not mean that military action is imminent or unavoidable,'' when the evidence suggests that all along the goal was always to replace Saddam Hussein through an invasion. For most of us in Congress, the goal was to destroy the weapons of mass destruction. For President Bush, weapons of mass destruction were just the first public relations means to the end of removing Saddam Hussein. For most of the rest of us, removing Saddam Hussein was incidental to the end of removing any weapons of mass destruction. In fact, the President was misleading America right up until 2 days before launching his war of choice when he told Americans that we had exhausted all other avenues.

The truth is that on the Sunday preceding the Tuesday launch of the war, there were offers of Security Council members to pursue an alternative to war, but the administration, in its race and rush to go to war, rebuffed them, saying the time for diplomacy is over.

By shortcutting the inspections process and sidestepping his own promises about planning, coalition building, and patience, the President used WMD as an excuse to rush to war, and that was an act of misleading contrary to everything the President told Americans about the walkup to war.

The very worst that Members of Congress can be accused of is trusting the intelligence we were selectively given by this administration and taking the President at his word. Imagine that, taking a President of the United States at his word. But unlike this administration, there is absolutely no suggestion that the Congress intentionally went beyond what we were told by the facts. That is the greatest offense by this administration. Just look at the most compelling justification for war: ''Saddam's nuclear program and his connections with al-Qaida.''

The facts speak for themselves. The White House has admitted that the President told Congress and the American public in his State of the Union Address that Saddam was attempting to acquire fuel for nuclear weapons despite the fact that the CIA specifically told the administration three times in writing and verbally not to use this intelligence. Obviously, Democrats did not get that memo. In fact, similar statements were removed from a prior speech by the President, and Colin Powell refused to use it in his presentation to the U.N. This is not relying on faulty intelligence as Democrats did, it is knowingly and admittedly misleading the American public on a key justification for going to war.

This is what the administration was trying so desperately to hide when it attacked Ambassador Wilson and compromised national security by outing his wife. It is shameful that to this day, Republicans continue to attack Ambassador Wilson rather than condemning the fact that those 16 words were ever spoken and that so many lies were told to cover it up.

How are the same Republicans who tried to impeach a President over whether he misled a nation about an affair going to pretend it does not matter if the administration intentionally misled the country into war?

The State of the Union was hardly an isolated event. In fact, it was part of a concerted campaign to twist the intelligence, to justify a war that had already been decided was more preferable. Again playing on people's fears after 9/11, the administration made statements about the relationship between al-Qaida and Iraq that went beyond what the intelligence supported. As recently reported by the New York Times in the Cincinnati Address, the President said, We have learned that Iraq has trained al-Qaida members in bombmaking and poisons and deadly gases, despite the fact that the Defense Intelligence Agency had previously concluded that the source was a fabricator.

The President went on to say that Iraq has a growing fleet of unmanned and manned aerial vehicles that could be used to disburse chemical or biological weapons, despite the fact that the Air Force disagreed with that conclusion. As the Wall Street Journal reported: The Air Force dissent was kept secret, even as the President publicly made the opposite case before a congressional vote on the war resolution.

That is two more memos that the Congress never got. In fact, when faced with the intelligence community's consensus conclusion that there was no formal relationship between Saddam and al-Qaida, the administration then proceeded to set up their own intelligence shop at DOD to get some answers that were better suited to their agenda. Again, there is a fundamental difference between believing incorrect intelligence and forcing or making up your own intelligence.

Where would the Republicans and the President draw the line? How else would 70 percent of the American public be led to conclude that Saddam Hussein was involved in 9/11? That was not an accident. In fact, I remember correcting the President of the United States at our first debate when he said to America it was Saddam Hussein who attacked us.

Why else did Vice President CHENEY cite intelligence about a meeting between one of the 9/11 hijackers and Iraqis that the intelligence community and the 9/11 Commission concluded never took place? Why else make false statements about Saddam's ability to launch a chemical or biological weapon attack in under an hour without ever clearing that statement with the CIA, which in itself mistrusted the source and refused to include it in the National Intelligence Estimate? Why else would they say we would be greeted by liberators when their own intelligence reports said we could be facing a prolonged and determined insurgency? Why else tell Americans that Iraqi oil would pay for the invasion when they had to know that the dilapidated oil infrastructure would never permit that to happen?

What about the President's promises to Congress that he would work with allies, that he would exhaust all options, that he would not rush to war? If the President wants to use quotes of mine from 2002, he might just look at the ones that were not the result of relying on faulty intelligence and trusting the President's word. As I said in my former statement before the authorizing vote—I wish the President had read this—if we go it alone without reason, we risk inflaming an entire region, breeding a new generation of terrorists, a new cadre of anti-American zealots, and we will be less secure, not more secure, at the end of the day. Let there be no doubt or confusion about where we stand on this. I will support a multilateral effort to disarm him by force if we ever exhaust those other options, as the President has promised, but I will not support a unilateral U.S. war against Iraq unless that threat is imminent and the multilateral effort has proven not possible.

In my speech at Georgetown on the eve of the war, I said: The United States should never go to war because it wants to. The United States should go to war because we have to. And we do not have to until we have exhausted the remedies available, built legitimacy, and earned the consent of the American people.

We need to make certain that we have not unnecessarily twisted so many arms, created so many reluctant partners, abused the trust of Congress, or strained so many relations that the longer term and more immediate vital war on terror is made more difficult. I say to the President, show respect for the process of international diplomacy because it is not always right but it can make America stronger, and show the world some appropriate patience in building a genuine coalition. Mr. President, do not rush to war.

Today, our troops continue to bear the burden of that promise broken by this administration. We need to move forward with fixing the mess the administration has created in Iraq. I have laid out in detail on five or six occasions my views about exactly how we can accomplish that and how we can get our troops home within a reasonable period of time. But that does not excuse our responsibility to hold the administration accountable if they knowingly misled the country when American lives were at stake. We need to do both.

Those colleagues on the other side of the aisle need to stop pretending that it does not matter if the administration stretched the truth beyond recognition and they need to start working to find out the real answers that

the country deserves and the real leadership that our troops in Iraq deserve. They deserve it from a Commander in Chief, not just a ''campaigner in chief.''

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. I believe the Senator from Rhode Island had an inquiry.

Mr. REED. Parliamentary inquiry: What is the status of the floor?

The PRESIDING OFFICER. The routine is the Senator from Connecticut is due to be recognized for 10 minutes, followed by a Republican.

Mr. REED. Mr. President, I understand the Senator from Tennessee will seek recognition after the Senator from Connecticut. How much time did the Senator want?

Mr. ALEXANDER. Three minutes.

Mr. REED. I ask unanimous consent that at the conclusion of Senator DODD's time, Senator ALEXANDER be recognized for 3 minutes, and at the conclusion of Senator ALEXANDER's time I be recognized for 15 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. GRAHAM. Reserving the right to object, how does this affect the debate on the Energy and Water conference report?

The PRESIDING OFFICER. If this request is approved, it would delay the beginning of consideration of the conference report.

Mr. GRAHAM. By how long?

The PRESIDING OFFICER. By approximately 6 minutes.

Mr. GRAHAM. I have no objection.

Mr. DODD. Reserving the right to object, what I think might be the appropriate way to do it, since I do not want to have my remarks on Iraq to necessarily go directly from that to the celebration of the year of dealing with premature babies, I suggest that at the conclusion of my remarks on the subject matter that I wish to speak on that we then turn to the Senator from Tennessee about the issue for 3 minutes, which I may ask him to yield for a minute of time just to comment because we worked together on this issue, and then turn to my colleague from Rhode Island. Is that all right?

Mr. REED. That is perfectly all right. I think to expedite consideration of the Energy bill, I revise my consent rather than 15 minutes, 10 minutes.

The PRESIDING OFFICER. As I understand, it is 10 minutes, 3 minutes, 10 minutes. Is there objection?

Without objection, it is so ordered.

The Senator from Connecticut.

Mr. DODD. Mr. President, in these 10 minutes I will address the issue of an amendment offered by my colleague from Michigan, and several others including this Senator, which we have worked on over the last week or so. This amendment will be voted on tomorrow, and we have tried here to come up with some ideas that could build bipartisan support for how we go from where we are today in Iraq to a successful conclusion of that conflict.

I think all of us recognize that we have ourselves in a mess in Iraq, no matter how one wants to characterize it. I was disappointed that the President used Veterans Day last week as an opportunity to attack those who have agreed with him at certain points and disagreed with him at others. It seems to me that what we need from the administration is far more clarity, a greater sense of vision, some concrete ideas on how we intend to conclude our involvement in Iraq, and a strategy for increasing the likelihood that the Iraqi people can build a stable government.

As we know, from the very beginning, the rationale for going to war in Iraq was filled with misrepresentations, deceits, and the falsification of many facts. There was no Iraqi purchase of uranium from Niger. There were no aluminum tubes being used to construct nuclear centrifuges. There were no stockpiles of biological and chemical weapons. We now know that allegations linking Iraqi officials to al-Qaida were untrue. To make matters worse, in my view, the administration's penchant for discarding international norms with respect to our missions in Iraq, Afghanistan and elsewhere, has unraveled decades of American diplomacy dedicated to enshrining the rule of law.

The course set by this administration has cost America its treasure, but it has also cost the lives of more than 2,000 of our service men and women. More than 14,000 others have sustained serious injuries. We are now spending somewhere around $4–$6 billion every month for U.S. military operations alone in that country.

There have been intangible costs as well most—significantly, the cost to America's favorable public image at home and abroad—a cost that has seriously impaired our ability to shape global responses to global challenges.

These challenges include North Korea's nuclear weapons, Iran's ambitions to develop its own weapons capability, genocide in Sudan's Darfur region, political instability in Lebanon and Syria, and a festering Arab-Israeli conflict. Anti-American nationalism is spreading throughout our own hemisphere as we saw in recent days during the summit meetings of the Americas; and the HIV/AIDS epidemic and the possibility of an avian flu epidemic all are being held hostage because of the missteps we have taken in Iraq.

These missteps have tarnished America's image, and have allowed the disaffected in Iraq and elsewhere to capitalize on these misfortunes and to distort our values and intentions, in order to inspire violence for their own purposes. We saw it in recent protests in Argentina. We are seeing it to a certain extent in the ongoing youth violence in France. We saw it several days ago in the tragic bombings in Amman, Jordan. We see it every day in Iraq as American and Iraqi soldiers and civilians are randomly attacked by angry, nameless, and faceless individuals. It is not enough to simply decry past mistakes or America's tarnished reputation. We have to do something to correct these mistakes and restore America's prestige.

In short, what we need is a plan for success in Iraq, and what better place to start than in that war-torn nation. Last month, while visiting Baghdad with my colleague from Rhode Island, Senator REED, I had the opportunity to meet with U.S. commanders on the ground and to visit with our men and women in uniform who in some cases are on their second or third tours of duty in that nation.

I cannot say how impressed I was with these heroes who risk their lives every single day in the service of our Nation, and with the senior military officers who lead them. We owe these brave Americans a huge debt of gratitude for their courage, sacrifice, and professionalism. But we owe them much more than that. We owe them a strategy and a framework for completing this mission. We owe them a sense of conviction that this is not going to be an indefinite struggle. That is why I joined with Senator LEVIN and others in crafting this amendment, which we hope will be embraced on a bipartisan basis. This amendment would require the President to publicly lay out for the first time a strategy and framework for our troops to follow so that they can successfully complete the mission in Iraq and come home.

Recently, the President told the American people that Iraq has made incredible political progress: from tyranny, to liberation, to national elections, to a new constitution in the space of 2½ years.

I agree with that assessment, but that is not a strategy for success. It is a statement of discrete events that have thus far occurred in Iraq, albeit positive events. Our troops and the American people deserve more than that, in my view. They certainly deserve more than simply being told that the strategy is: When they stand up, we will stand down. What our troops are looking for, what I believe the American people are looking for, what Iraq and Iraq's neighbors are looking for, is a clearly articulated strategy, a timetable which culminates in the election of a sovereign, inclusive Iraqi government with the expertise and experience to govern effectively. Thus far, the administration has failed to articulate such a strategy or such a timetable.

Before success can be a reality, however, competent Iraqi security and police forces, respectful of the civilian authority, must be at the ready to secure Iraq's borders and provide security within its territory.

And fundamental to achieving success, in my view, is ensuring that the vast majority of Iraqi Kurds, Sunnis, and Shi'as have bought into whatever political architecture emerges from the upcoming elections. At the moment, that is not a given.

Some but not all Iraqis have decided that the road to reconciliation and inclusion is the right road. Others remain mistrustful and uncertain. Although the latter may be a minority, it is painfully evident that they have the capacity to derail progress for all Iraqis.

With more than 160,000 American servicemen in Iraq, our presence and our policies are going to be pivotal in helping to shape Iraq's future. But the United States, despite all of its military strength, cannot, through force alone, remake Iraq. Moreover, the longer U.S. troops remain an occupying force there, the greater the hatred and disaffection among Iraqis and the larger attraction for foreign jihadists.

That is why it is especially important that the administration proceed with some sense of urgency in setting forth its strategy for involving Iraq's neighbors in addressing the political, ethnic, and tribal divisions that exist in Iraq and fuel instability, particularly so in light of the size of the ''no'' vote cast by Sunni voters against the new constitution.

The Levin amendment imbues the administration with that urgency. It states that U.S. forces should not remain in Iraq indefinitely. It establishes expectations that calendar year 2006 should be a period of significant transition to full Iraqi sovereignty, thereby creating the conditions for the phased redeployment of U.S. forces from Iraq. It stresses the need for compromise among Iraqis to achieve a sustainable sovereign government. And most important, it calls upon the President no later than 30 days after enactment of this bill to tell the American people his campaign plan and estimated dates for the redeployment of U.S. forces.

The pending amendment provides concrete ideas for completing our mission in Iraq successfully, for phased redeployment of U.S. combat forces, for reassuring Iraq and its neighbors that we have no ulterior motives with respect to Iraq's future, and for restoring America's influence and prestige.

A successful strategy for Iraq will free-up critical resources and personnel to enable America to address urgent homeland security priorities: protecting schools and hospitals, water and power stations, and other vital locations; equipping our firefighters and other first responders who are the first line of defense in our communities against acts of terror; and fortifying our Nation's transportation infrastructure.

Today, America is less secure than it was 5 years ago, as resources have been diverted from programs to maintain the readiness of our Armed Forces, and to strengthen our homeland security, in order to pay for the continuing occupation of Iraq. It is time for the Bush administration to make a major course correction in our policy in Iraq if we are going to be successful, one that will bring our military involvement nearer to a close. It is time for the administration to refocus attention and resources on our Nation's real priorities—keeping America strong, secure, and prosperous for the 21 century.

I urge my colleagues to take a good look at the Levin amendment. It has been worked on for the last week by a number of us who have tried to come up with a plan for success, recognizing the achievements that have occurred but also laying out a strategy of how to succeed in the coming months. We cannot continue on the path we are on indefinitely. It will not work. It has cost us dearly at home and abroad.

I think that this amendment is one that many of my colleagues could be drawn to. It doesn't lay out timetables definitely, but it does lay out a framework, a strategy for success. I urge my colleagues to vote to adopt this amendment when it comes to a vote tomorrow.

I yield the floor.

NATIONAL PREMATURITY AWARENESS DAY

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. While my friend, the Senator from Connecticut, is on the floor, I would like to change the subject for just 2 or 3 minutes and talk about the issue of babies born prematurely, an area he and I have been working on together. Premature infants are 14 times more likely to die in the first year of their lives. This is Prematurity Awareness Month. Tomorrow is Prematurity Awareness Day. It is the No. 1 cause of infant death in the first month of life in the United States. Premature babies who survive may suffer lifelong consequences, including cerebral palsy, mental retardation, chronic lung disease, vision and hearing loss. Half the cases of premature birth have no known cause, and any pregnant woman is at risk.

That is why the Senator from Connecticut and I have introduced the Prematurity Research Expansion and Education for Mothers Who Deliver Infants Early Act, which we call the PREEMIE Act. It expands research into the causes and prevention of prematurity and increases education and support services related to prematurity.

I ask unanimous consent that the following Senators be added to our legislation in honor of Prematurity Awareness Day, which is tomorrow: Senators BENNETT, BINGAMAN, CLINTON, BOND, COCHRAN, COLLINS, HAGEL, INOUYE, LIEBERMAN, LUGAR, OBAMA, LAUTENBERG, LINCOLN, and TALENT.

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

Mr. ALEXANDER. The March of Dimes is our partner, a strong advocate for the PREEMIE bill. It is leading the prematurity campaign. It will sponsor a symposium on prematurity research here in Washington, DC, on November 21 and 22.

Mr. GRAHAM. Would the Senator add my name, please?

Mr. ALEXANDER. I ask unanimous consent to add the name of the Senator from South Carolina.

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

Mr. ALEXANDER. It calls for a Federal research plan. I thank our colleagues for joining us in this effort. We hope the legislation will pass Congress this year.

With the permission of the Senator from Rhode Island, I ask unanimous consent that the Senator from Connecticut have a minute to make his comments on the legislation.

Mr. REED. I have no objection.

Mr. DODD. I thank my colleague. I am pleased to join with my colleague from Tennessee in this effort. I commend our colleagues from around the country who joined us, including our friend from South Carolina, the most recent cosponsor of this legislation.

One out of every eight babies in our country is born prematurely—that is 1,300 infants every day and over 470,000 every year. The problems associated with prematurity are legion. We are making incredible advances in how we treat these children, but we need to do a lot more. I am not going to go to great length here except to commend my colleague from Tennessee and tell him how much I have enjoyed working with him on this issue.

This is a critically important issue. It is the kind of issue that deserves more attention. We hope to get that attention with these efforts. I commend him for his leadership. I am pleased to be a partner in this effort, and I am grateful to my colleagues for joining us in this endeavor.

The PRESIDING OFFICER. The time of the Senator has expired.

The Senator from Rhode Island.

Mr. REED. Mr. President, I rise to express my strong support for the amendment offered by Senator LEVIN from Michigan. I was pleased to work with a number of my colleagues on this amendment, including Senator LEVIN, Senator BIDEN, Senator HARRY REID, Senator KERRY, Senator FEINGOLD, Senator KENNEDY, Senator DURBIN, and particularly Senator DODD. Senator DODD and I had the privilege of traveling together through Iraq just about 3 weeks ago. Our trip was very illuminating. His participation is one I deeply appreciated.

We all understand that there are over 160,000 American troops in Iraq. They are serving magnificently, and they have paid a difficult price for their service. We have lost soldiers and sailors and airmen and marines. We know how important it is to succeed in Iraq.

But the American people are concerned. A Pew Research poll conducted last week found that those polled believed that Iraq was the most important problem facing the country today. A second poll conducted by NBC News and the Wall Street Journal, however, found that 64 percent of those polled disapproved of the way President Bush is handling this situation in Iraq.

At the heart of that, I believe, is a sense that there is no plan. There are slogans—''Stay the course.'' There are

slogans—''When the Iraqis stand up, we stand down.'' But a slogan is not a plan, and the American people and this Congress should demand a plan.

That is the essence of the Levin amendment. We are not collectively a Commander in Chief. We should not presume to think so. He is responsible for such a plan, and he has to provide, not just to us but to the American people, a sense that there is a plan that is leading to an outcome which is successful in a timeframe which is feasible. What the American people are seeing, however, is chaos without a plan.

I did not vote to authorize the use of force in Iraq. At that time, my concerns were, after the initial decisive military victory, that we would be swept up in a difficult situation. That is what has come to pass. I thought the cost would be huge then, but I did not expect that we would enter the phase after military operations, the conventional attack, with essentially no plan. That was a surprise to me and a surprise to so many others.

According to an article in the Philadelphia Inquirer, when a lieutenant colonel briefed war planners and intelligence officers in March 2003 on the administration's plans in Iraq, the slide for the rebuilding operations or phase 4–C, as it is known in the military, was simply this: ''To be provided.'' We are still waiting. We are still waiting for a plan that works, that is measurable, and that will give the American public the confidence that our course ahead will lead to success.

We all know in February of 2003 when General Shinseki was asked about the troop strength we needed there, he said several hundred thousand soldiers. He was dismissed—and that is a kind word for the treatment he received. Secretary Rumsfeld said the estimate was '' . . . far from the mark.'' Secretary Wolfowitz called it ''outlandish.'' In fact, it was very accurate, very perceptive—prophetic, indeed, because after our initial entry into Iraq, after the first days of fighting, it became more and more obvious we needed more troops to, among other things, secure ammo dumps that were prolific throughout the country. Perhaps we have lost that window where more troops will make a difference, but we certainly have not gone past the point where a good plan will make a difference, and we need that good plan.

The Congressional Research Service has summarized dozens of reports and articles, cataloging mistake after mistake. In their words:

The lack of reconstruction plan; the failure to adequately fund reconstruction early on; unrealistic application of U.S. views to Iraqi conditions by, for example, emphasizing privatization policy; the organizational incompetence of the CPA; changing deadlines . . .

Et cetera, et cetera, et cetera.

I could add, a very unwise de-Baathification process and the disestablishment of the Iraqi army. But the litany goes on and on. It was ad hoc, off the cuff. It was not a plan that worked and it is not working today.

We need this plan. That is what the Levin amendment calls for. Give us a plan. Not just us, but give the American people a plan. We have made progress in Iraq. We have had elections. But that progress is fragile and reversible. We have to have a coherent way ahead. And again, hope is not a plan.

This amendment is not, as some would characterize it, cut and run. It asks the President to lay out conditions. It asks to define a mission. It asks to catalog the resources necessary. Then it anticipates—and I think this is prudent—that we would have a phased redeployment of troops.

Just today, in London, Prime Minister Blair talked about British troops coming out next year, 2006. Jalal Talabani, the Iraqi President, said the troops are coming out in 2006. British Defense Secretary John Reid—no relation—said that we are likely to see troops come out next year if conditions allow. So the idea of looking ahead with a good plan and making a good-faith estimate as to troop levels seems to me the appropriate thing to do. It is a campaign plan. It is a campaign plan which will give us an idea of how long we will be there.

We need not simply to reflect what is happening on the ground in Iraq. We cannot sustain indefinitely 160,000 American troops in Iraq.

It will bring our land forces, our Army, our Marines to their knees. They are overstretched. They have a billion dollars of built-up maintenance on helicopters and vehicles. And the personnel turmoil is excruciating. We owe it to them to have a plan. And we must be able to show how we are paying for this plan.

This plan would also ask the President to talk about a definition of ''success,'' talk about the conditions, talk about situations which would cause those conditions to be reevaluated. The Levin amendment is asking for the obvious. Show us the way ahead, not in a slogan but in concrete, measurable elements that will constitute a good plan. We have been waiting for 2½ years for such a plan.

What is the mission? It has changed. One of the initial missions was to deny the Iraqi Government weapons of mass destruction. We find they had none.

Then, of course, the mission was to root out terrorist insurgents that might be collaborating with Saddam Hussein's regime. The evidence strongly suggests there was no such material collaboration. But today there are thousands of hardened terrorists that we are in the process of rooting out—after the attack, not before.

Then, of course, there was the mission of creating a democratic oasis in Iraq that would be transformative of the entire region.

Is that still the mission? If it is the mission, we are going to need many decades, billions of dollars, and to mobilize the strength of this country, not just militarily but for technical and political assistance, and we haven't done that.

The President doesn't suggest—from everything I have heard and from everything I have seen—that he intended to do that.

What is the mission? What are the resources? We are spending about $4 billion to $6 billion a month in Iraq and Afghanistan. How long will we spend that much money, and when we finish how much will we have to spend to reconstitute our equipment, to reorganize our troops? Tell us. It is important because we make decisions on this floor that are based upon assumptions about how much we will be spending years ahead in Iraq, and we have to have those numbers. We need the conditions. More than that, we need all this tied into our troop strength in Iraq.

That is essentially what the American people are looking at very consciously.

How long will their sons and daughters be committed to this struggle?

I believe we have to succeed, and I am here because we can't succeed without a coherent plan, not one that is made up of slogans and good intentions but one that is premised on real conditions, hardnosed, and something that will help us and help the American people to understand our commitment and help us to succeed in that commitment.

I hope very strongly that the Levin amendment is agreed to. The Republican counterpart makes a few changes, but the critical change is it essentially takes out the notion of a plan.

The opposing amendment would strip out something vital in the Levin amendment; that is, a campaign plan that would help show, project, the phased redeployment of American troops. I think that is essential.

If Tony Blair can speak off the cuff in London today about the phased withdrawal of British troops, and Talabani, the Iraqi President can do it, and John Reid, the Defense Secretary of Great Britain can do it, then certainly the President of United States can do it. And we ask him to do it. In fact, if we agree to this amendment, it will require him to do it.

I yield the floor.

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2006—CONFERENCE REPORT

The PRESIDING OFFICER (Mr. THOMAS). The hour of 4:30 having arrived, the Senate will proceed to the consideration of the conference report to accompany H.R. 2419, which the clerk will report.

The legislation clerk read as follows:

The Committee of Conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill, H.R. 2419, making appropriations for energy and water development for the fiscal year ending

September 30, 2006, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, and the Senate agree to the same, signed by all of the conferees on the part of both Houses.

The PRESIDING OFFICER. The Senate will proceed to the consideration of the conference report.

(The conference report is printed in the proceedings of the House in the RECORD of November 7, 2005.)

The PRESIDING OFFICER. Under the previous order, there will now be 30 minutes of debate equally divided between the bill managers, with 15 minutes under the control of the Senator from Arizona, Mr. MCCAIN, and 15 minutes under the control of the Senator from Oklahoma, Mr. COBURN.

DEFENSE AUTHORIZATION

Mr. LEVIN. Mr. President, I think we indicated last week that while the time is limited, as it had been prior to this point in terms of debate on the Iraq amendments, there would be time either on the amendments themselves or in morning business tonight after the vote. There is a very limited period of time under the unanimous consent agreement for tomorrow. We had hoped that could have been expended, but apparently there is no agreement to that.

I remind colleagues who have not had a chance to speak on the Iraq amendments which are pending that the best time to do that, given the very limited time remaining on tomorrow on these amendments, would be after the vote on the appropriations bill tonight.

I suggest the absence of a quorum.

The assistant legislative clerk proceeded to call the roll.

Mr. DOMENICI. 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. DOMENICI. Mr. President, I ask unanimous consent that 5 minutes of my time be reserved intact prior to the vote at 5:30, and I object for the other side.

How much time remains, and how is it allotted?

The PRESIDING OFFICER. Each side has 10 minutes at this time, and there are four Senators to equally divide the 10 minutes. Each of the four Senators has 10 minutes. The vote will be 40 minutes from now.

Mr. DOMENICI. I didn't understand. Do we know the names of the Senators? REED, DOMENICI.

The PRESIDING OFFICER. And Senators MCCAIN and COBURN.

Mr. DOMENICI. All right.

I ask consent to call up conference authority to accompany H.R. 2419 and ask it be considered.

The PRESIDING OFFICER (Mr. ISAKSON). The report is before the Senate.

Mr. DOMENICI. Mr. President it is my pleasure to bring the Energy and Water conference report for fiscal year 2006 to the floor for consideration.

The bill provides $30.495 billion, consistent with the conference allocation and $748 million above the request and the House level and budget request and $750 million below the Senate allocation. This bill is a product of extensive compromise on both sides.

U.S. Army Corps; $5.38 billion: +$636 million above the House, $84 million above the Senate and $57 million below fiscal year 2005 levels and +$1.05 billion above the request.

In the wake the hurricanes, this budget rejects the direction of the President's proposed budget. It is clear that we need to invest more in critical water infrastructure, not less.

This also funds an $8 million study to investigate various storm protection needs for New Orleans and vicinity, as well as $10 million for the Louisiana coastal area.

The report does not provide for the supplemental needs of Louisiana, Mississippi, Texas or Florida, nor does it repay any of the projects that have been tapped to support the Corps' post hurricane operations. The Congress will address this as part of the emergency supplemental.

Bureau of Reclamation $1.06 billion. This is: +$53.5 million above the House, -$16 million below the Senate, +$114 million above the request.

Mr. President—$24.29 billion is provided to the Department. This is $76 million above the request and consistent with fiscal year 2005 levels. NNSA received $9.196 billion. This is $217 above fiscal year 2005 levels and $200 million below the request, $348 million above the House and -$250 below the Senate.

The Conferees have agreed to increase funding for the Reliable Replacement Warhead Program. This innovative approach is intended to challenge weapons designers to enhance the existing warheads to improve the safety, surety and manufacturability.

The conference agreement provides no funding for a modern pit facility. I do not believe the administration has made the case that this costly new project is necessary at this point. The Department must focus on improving the manufacturing capability of pits at Los Alamos rather than experimental activities.

Lab Directed Research and Development, LDRD. The bill increases the LDRD amount to 8 percent. As an experiment, it applies overhead costs, but also ensures that overall LDRD funding does not fall below the 6 percent overall.

NNSA's Office of Nuclear Nonproliferation is provided $1.63 billion. This is a slight decrease below the President's request. However, the conferees were able to provide needed funding for key nonproliferation programs.

Mr. President, $220 million is provided to initiate construction of the mixed oxide conversion plant at Savannah River Site in South Carolina this fiscal year. This level of funding will permit the Department to move ahead with construction in fiscal year 2006.

The conference report provides $309 million, an increase of $42 million above the request and $85 million above fiscal year 2005, for the Nuclear Detection Research and Development account. This is critical funding provided to the labs to stay a step ahead of terrorists and other threats.

The conferees provide $427 million, an increase of $83 million, to protect nuclear materials in Russia that was negotiated as part of the Bratislava Summit in February 2005 between President's Bush and Putin.

This will allow the administration to secure several new Russian weapons sites that have previously not been open to the U.S. to make critical security upgrades to protect Russian nuclear warheads. Russian sites have traditionally been poorly protected despite the fact that the sites store nuclear warheads.

The conferees provide the Office of Science $3.63 billion, an increase of $170 million above the request. The conferees provide an additional $30 million for advanced computing at Oak Ridge.

Fossil Energy R&D will receive $597 million, up $26 million from fiscal year 2005 and $106 million above the request. The conferees defer the use of $257 million to be used to support the construction of the FutureGen coal plant.

The conference report provides $1.8 billion for Energy Supply and Conservation research and development. This is $24 million above fiscal year 2005 and $81 million above the request.

For fiscal year 2006, the conferees have provided $240 million for weatherization assistance. This is a $15 million increase above the request and will provide important funding to offset rising energy costs this winter.

In fiscal year 2006, the conferees provide $7 billion in funding for environmental management activities. Within this amount the defense cleanup activities receive $6.19 billion, an increase of $177 million above the request.

Yucca Mountain is facing serious delays regarding the filing of the license application and the EPA established radiation standard. In addition, this facility will be too small to address all our Nation's spent fuel and defense waste needs.

We need to find ways to reduce the amount of spent fuel to be sent to the repository and encourage the Department to find ways to do more through spent fuel recycling.

Recently, the Secretary of Energy Sam Bodman outlined his vision for the future of nuclear power, which includes investment in commercial spent fuel recycling and to minimize the proliferation threats.

The conference agreement provides $50 million for the Denali Commission, an increase of $47 million over the President's request.

The conference agreement provides $65 million for the Appalachian Regional Commission, consistent with the President's request.

The conference agreement provides $12 million for the Delta Regional Authority.

The conference agreement provides a total budget of $734 million for the Nuclear Regulatory Commission, the same as the Senate bill and is $41 million above the request. NRC is charged with new security investigations, as well as supporting the filing of new reactor license requests.

The conference report provides $5.4 billion for the Army Corps of Engineers. This is approximately $57 million less than enacted in fiscal year 2005.

The conference report provides $1.05 billion more for the Corps than was proposed by the budget request. It also includes $636 million more than the House Bill and $85 million more than the Senate bill.

This significant increase signifies a congressional commitment to restore our aging water resources infrastructure.

For too long we have not provided sufficient resources for our water infrastructure and we are now paying the price.

Navigation channels are not being dredged, which limits commerce.

Preventive maintenance is not being performed, resulting in unscheduled outages of projects.

Construction of new infrastructure is being delayed and constructed inefficiently due to funding constraints.

Studies of water resource needs are being delayed or deferred due to funding constraints.

This conference report attempts to set us on the right path to recapitalize our water resources infrastructure by providing $2.4 billion for construction projects and $2 billion for Operations and Maintenance of existing projects.

Some of the construction highlights of the bill include: All of the Dam Safety projects are funded at the Corps' full capability; $90 million for continued construction of the Olmsted Lock and Dam; $101 million for continued construction of the New York-New Jersey Harbor; $70 million for continued construction of the McAlpine Lock and Dam, on the Ohio River; $28 million for continued construction of the West Bank and Vicinity, New Orleans, Louisiana flood control project; and $137 million for continuation of the Everglades Restoration Projects in Florida.

Some of the operation and maintenance items include: $24 million for the maintenance of the Tennessee-Tombigbee Waterway; $62.4 million for operations and maintenance of the Upper River navigation system; $55 million for operation and maintenance of the Ohio River navigation system; $17 million for maintenance of the Columbia River jetties; and dredging funds were included for most of our smaller ports and waterways as well.

The Mississippi River and Tributaries Project was funded at $400 million. This project provides for comprehensive navigation and flood control improvements on the Mississippi River and its tributaries below St. Louis, MO.

The conference report includes $10 million for continued studies of how to restore Louisiana's Coastal Wetlands. Additional funding and authorization for wetland recovery work is included in the administration's emergency supplemental proposal.

The conference bill contains a proviso concerning a comprehensive hurricane protection study for south Louisiana that would afford protection from a category 5 storm surge and would exclude the normal policy considerations in determining the benefits of this protection level.

It is my understanding that previous studies undertaken by the Corps of Engineers balanced the level of protection with the benefits that established policies allowed.

None of the existing studies provide detailed analysis of what is necessary to provide Category 5 protection for south Louisiana.

This study would provide that analysis. In order to expedite the work, the Corps is directed to provide a plan for short term protection within 6 months of enactment, a plan for interim protection within 12 months of enactment and long term comprehensive protection within 24 months of enactment.

This study would rely heavily on existing studies with projections of necessary actions to achieve Category 5 protection. The study would also integrate flood, coastal and hurricane protection measures into a seamless line of protection for south Louisiana.

On August 29, Hurricane Katrina came ashore on the Louisiana and Mississippi Gulf coast. This storm devastated the region.

The conference report does not include funding that has been requested by the administration for hurricane recovery efforts along the gulf coast; rather, these efforts will continue to be funded through emergency supplemental appropriations.

The administration has proposed spending $1.6 billion to restore the levees to prehurricane strength and make repairs to existing Corps infrastructure located in the hurricane's path.

The conference report provides $1.065 billion for the Bureau of Reclamation. This is approximately $47 million more than was enacted in fiscal year 2005.

The conference report provides $114 million more for Reclamation than was proposed by the budget request. It also includes $53.5 million more than the House bill and $16 million less than the Senate bill.

The conference report provides sufficient funding to allow Reclamation to continue their mission of providing water and power to the West.

Some of the major highlights include: $129.4 million for the various divisions of the Central Valley Project in California; $52.2 million for the Central Valley Project Restoration Fund; $34.4 million for the Central Utah Project; $56 million to continue construction of the Animas-La Plata Project; $16 million for the Ft. Peck-Dry Prairie Rural Water System in Montana; $21 million for the Klamath Project, $37 million for the California Bay-Delta Restoration program.

These ongoing water resource projects provide benefits to our citizens by making large parts of the western United States habitable.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. Without objection, the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CRAIG. 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. CRAIG. Mr. President, I ask unanimous consent to be allowed to use 5 minutes of Senator MCCAIN's allotted time under the UC.

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

Mr. CRAIG. Mr. President, for just a few moments, I rise to recognize the work that has been done on H.R. 2419, the Energy and Water Development Appropriations Act of 2006.

For a good number of years, some of us who work on the physical sciences in the Senate—by that I mean on committees that recognize the kind of research dollars that are applied to new technologies beyond health care, but more in the physical sciences—have been increasingly concerned that we have dedicated almost exclusively all research money to health care, medical science, biological sciences, and not to the physical sciences.

We had once invested heavily in the space program, and for decades it advanced our country beyond all other countries in technology, in all of the high-tech that has led our economy today and is now leading the world economy. Much of that was a spinoff from the early days of the investment in the space program. When few saw the opportunities or the benefits, some in Congress did, and it was well funded.

While I am not standing on the floor in any way to criticize our investment in the biological sciences or health care—and clearly that has advanced technology today well beyond where we thought we could go, and in a much more rapid way to look at cancer and diabetes and other of our chronic illnesses in this country that are causing tremendous problems and death loss—the one thing that has been obvious in tight budget years is that we have not been willing to commit the kind of investment dollars to the physical sciences this bill begins to speak to clearly today. For example, we are spending more money than ever before on nuclear energy, pushing the technology curve once again to become leaders in the world on a technology that we once led on but we let move away. Now for a variety of reasons,

most importantly because of a need for clean energy, we are recognizing once again we have to put the hard dollars back into the technology that takes us beyond the lightwater reactor to the high temperature gas reactor and even beyond that some day, out there 40 or 50 or 60 years to technologies such as fission. That is in part what this budget and this appropriations bill speaks to.

Certainly I come to the floor to thank the chairman of the Appropriations subcommittee, PETE DOMENICI, for his vision, his farsightedness in recognizing and fighting for some of the new money that advances us at our national laboratories that are tremendous treasures to advance these types of technologies. Once weapons laboratories during the Cold War, they are transforming themselves into lead research facilities well beyond what they were a decade or two ago. Clearly, that is true, whether it is in my State of Idaho or in New Mexico or California or in the other States that have the privilege of housing these laboratories and the quality of work they do.

While this conference did not come about easily, while there are many more dollars that could be spent productively to advance our country and our leadership in the world of science, this is a major step in the right direction under tight budget constraints.

I am proud to be a conservative. I believe in balanced budgets. I believe in bringing down deficits. I believe that all parts of the appropriating process have to share in that responsibility. Clearly, we have shared in it in the Energy and Water Development appropriations legislation. At the same time we have worked cooperatively with the House and, in a common cause, advanced a variety of the technologies that are embodied within this appropriations bill that is critically important.

I thank the chairman for the work he has done to advance a variety of the technologies I have spoken to, and yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. I thank the Senator. Let me reciprocate. He, too, is a very significant part and plays a very important role in not only the matters he discussed but many others in this bill. I commend him for it. His State has a magnificent laboratory. They are performing some great activity in terms of the future generation of civilian nuclear power. That is important for our and the world's future.

I take a moment to thank the staff and recognize their hard work, long hours, many discussions: From the majority staff, Scott O'Malia, Roger Cockrell, and Emily Brunini; on the minority staff, Drew Willison and Nancy Olkewicz. Everybody should understand that these appropriations bills are put together by a small, excellent, and professional staff. Some people think that more oversight should occur. I hope the authorizers will do that. We can't do it in detail. We do our best.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I make a couple of points that I think are worth making on this most important bill. First, I express my appreciation to Senator DOMENICI. He and I have worked on this bill for a long time. When I say ''this bill,'' year after year we work hard to put a bill together. Some years are easier than others. This was not an easy year. It was a very difficult year. We have a lot of Senators who are not happy with what we have been able to do, but we have done the best we can under very trying circumstances.

Our conference allocation is $750 million above the President's request. Of that amount, $600 million went to the Corps of Engineers for flood control and navigation projects. This is in relation to the post-Katrina world in which it is certainly obvious why we needed to do this. This is a wise investment of our Nation's resources. The scrutiny of the Corps' activities is only going to increase in coming years. So it is imperative that they conduct themselves in a completely open and transparent manner moving forward.

Unfortunately, the result of placing such a high priority on flood control is that important programs of the Department of Energy are essentially flat. This will not be an easy year for renewable and energy-efficient programs, the Office of Science, or the critically important environmental cleanups at nuclear weapons sites nationwide. We must do better in future years. In fact, we have to find more resources for these important activities.

Secondly, this conference report is the product of thousands of compromises, not hundreds. None of the four principal subcommittee conferees agrees with every provision contained in this conference report, and that is an understatement. For example, as far as I am concerned, we are carrying a small amount of funding and some report language directing the Department to set a nationwide competition to see if there is a State out there willing to voluntarily accept a spent fuel reprocessing facility. While I have always supported processing research as a prudent investment, I have never supported moving forward in any way on an actual reprocessing facility for many of the same reasons that I oppose centralized storage—the danger of transportation outweighs the benefits.

However, I completely respect the desire of Chairman HOBSON, Chairman DOMENICI, and Ranking Member VISCLOSKY to do something—I appreciate and congratulate and applaud each of them—to change the dynamics surrounding what I believe is the failed Yucca Mountain project. I have worked with Senator DOMENICI for many years. He is my friend. It goes without saying that we have difficulties in this bill, but it is never anything personal. We have communication that is as good as any two Senators in this Congress. It is a good give-and-take process. Senator DOMENICI understands that legislation is the art of compromise. We are both realists. I have been the chairman of this subcommittee on a number of occasions, and he has been the ranking member. We have always worked well together.

I thank both the House and the Senate staff for doing a tremendous job under the most trying circumstances. A lot of times we are at home, in the safety and security of our homes and we have staff members working well into the night, into the morning, trying to come up with a product they can submit to us that we can get through this body. This has been a long, difficult road this year. My hat is off to all the House and Senate staff for sticking with it and bringing forward the recommendations that will be accepted this evening.

On the House side, thanks to Kevin Cook, Scott Burnison, John Blazey, Terry Tyborowski, Tracy LaTurner, Tanya Berquam, Dixon Butler, Peder Morebeer, and Felicia Kirksey.

On the Senate side, thanks to Scott O'Malia, Emily Brunini, Roger Cockrell, and Nancy Olkewicz. I probably shouldn't spend too much time on Drew Willison, but I couldn't spend too much time. What he has done in working to craft this legislation, not for me, not for Senator DOMENICI, not for the Senate, but for the people of this country, words cannot express adequately my appreciation for his good work. No one—I say that without qualification or reservation—knows this bill better than he does. His work is something the American people should understand they have gotten their money's worth from the work he has done. It was a tough year. It is a product we can all be proud of.

I thank the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. REID. I yield back all of the time I have.

The PRESIDING OFFICER. The Senator yields back his time.

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, parliamentary inquiry: I know there is another Senator, but if he doesn't come by 5:30, I understand we are going to vote; is that correct?

The PRESIDING OFFICER. If all time is yielded back, the vote will occur at 5:30.

Mr. REID. I have yielded back my time. How much time is left?

The PRESIDING OFFICER. The Senator from New Mexico reserved 5 minutes prior to the vote and has 4 minutes remaining.

Mr. DOMENICI. I must say, if the Senator from Oklahoma isn't here by 5:30, we can't yield back his time, but we are supposed to vote.

The PRESIDING OFFICER. The Senator is correct.

Mr. DOMENICI. I am not trying to take his time. I am going to speak because I have time. If he comes, I will give him whatever I have.

Senator REID talked about renewables. While we weren't able to do everything in each of the R&D programs, we are over the budget with reference to conservation, wind, biomass, solar, and hydrogen. We are higher than the budget request in each of those. We are pleased about that.

Move over to the nonproliferation budget, which everybody says is terrifically important for our country. That is up. An area which the occupant of the Chair is familiar with, that is the MOX, the mixed oxide, which is a part of nonproliferation but is America's first significant effort in moving ahead with reprocessing. It starts by a giant step at converting plutonium that comes from thousands of nuclear weapons that have been reduced, eliminated, and the plutonium remains. We are trying to convert it. The Savannah River Project has accepted it. While the House had zeroed it out—a big mistake, in my opinion—we were able to fund it by long and hard negotiations. It was one of the items that held this bill up. It is funded not as much as it should be but sufficient to keep this valuable, almost necessary, project going. That is good.

Likewise, there should be no doubt, harkening back to nonproliferation, that the President was right in his budget. He asked for a big increase, while the rest was either zeroed out, slightly reduced. There was an 11 or 12-percent increase. We retained that, and it will now see us make a very major effort in the detection, the cleanup, the safety of items that could proliferate in all the areas, but predominantly in the area of nuclear.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator yields the floor.

PROTECTING THE TREATY FISHING RIGHTS OF TRIBES

Mr. INOUYE. Mr. President, I rise today to address some lingering concerns about certain report language in the fiscal year 2006 Energy and Water Appropriations Conference Report and to seek clarification. During my many years as chairman and vice chairman of the Indian Affairs Committee, I became acutely aware of the importance of protecting the treaty fishing rights of tribes in the Northwest and spent much time discussing this issue with many of the Northwest tribal leaders. I know that without independent technical data and analyses on the status of salmon and steelhead runs in the Columbia Basin, it will be difficult for them to act professionally as comanagers of the resource. The final conference report contains language directing the Bonneville Power Administration, BPA, to cease funding an important independent scientific research center based in the Pacific Northwest, known as the Fish Passage Center, FPC. The language directs BPA and the Northwest Power and Conservation Council, NPCC, to transfer the functions of the Fish Passage Center in a way that ensures ''seamless continuity of activities'' without giving direction about how this transfer should take place.

The Northwest Power Act called for the NPCC to establish a fish and wildlife program. That program has called for BPA to fund the Fish Passage Center for the past 20 years. The data and analyses the center has provided has been invaluable to the States and tribal fishery managers of the Columbia Basin. Can the distinguished chairman of the Energy and Water Subcommittee tell me if this language was in any way intended to supersede the NW Power Act or the specific provisions in the NPCC's present fish and wildlife program calling for a number of key functions to be performed and whether the state and tribal fishery managers will have input into how the center is reconstituted?

Mr. DOMENICI. The premise of the longtime member of the Indian Affairs Committee is correct. We do not intend this language to supersede the Northwest Power Act or the Council's fish and wildlife program. Certainly both the Bonneville Power Administration and the NPCC are expected to work closely with the State and tribal fishery managers in determining a suitable entity that could take over these functions so that the fishery managers, including the tribes, continue to receive independent analyses as they have in the past.

Mr. CRAIG. Mr. President, I appreciate the attention of my colleagues to this regional issue regarding the Fish Passage Center and would like to make a few comments to clarify the intent of the language.

This language is not about treaty rights; this issue is about ensuring accurate data is used in recovering the species. Removal of funding to the FPC does not mean the current functions will disappear. It is my understanding that other institutions in the region now perform most of the data collection and dissemination that is performed by the FPC. Reduced redundancies mean increased efficiency and effectiveness in the regional fish and wildlife program. The end result is a more focused program and the region moves forward toward recovery of the species.

While BPA has contracted the FPC for the last 20 years, many questions have arisen regarding the reliability of the technical data. The Northwest Power and Conservation Council's Independent Scientific Advisory Board, ISAB, issued a report in 2003 in which it raised serious questions about the FPC's analyses. The ISAB said FPC's ''basic model and methods of presentation are now inadequate to make confident predictions for management, and other interpretations of the accumulated data are needed.'' Clearly, I am not alone in questioning FPC's reliability. Data cloaked in advocacy create confusion. False science leads people to false choices. We do not have to choose dams or salmon. They can, and should, continue to coexist.

I am confident the BPA and NPCC will work with the region, both States and tribes, to ensure a seamless transition of functions. I thank the chairman for allowing me to speak on this matter.

MIXED OXIDE FUEL PROJECT

Mr. GRAHAM. Mr. President, I rise today to express my concern regarding the Mixed Oxide fuel project. This project is vital to reduce the threat of terrorists or rogue nations obtaining nuclear weapon materials. By resulting in the disposal of 34 metric tons—64 tons in total—of surplus weapon-grade plutonium, enough for thousands of nuclear weapons, the MOX program helps accomplish one of our most important nonproliferation goals. This plutonium, once converted into fuel for commercial nuclear power plants, is a real ''swords into plowshares'' program.

Mr. DOMENICI. I have been a forceful advocate of the permanent disposal of the 34 tons of excess weapons-grade plutonium from the U.S. and Russian stockpiles. This material equals the same amount of plutonium as contained in 8,000 warheads. This is the largest non-proliferation effort undertaken by the U.S. and G–8 partners. In the Fiscal Year 1999 Energy and Water bill, I included $200 million in emergency/funding to provide the initial investment in the Plutonium Disposition program. Excess weapons grade plutonium in Russia is a clear and present danger. For that reason, the committee considers the Department's material disposition program of utmost importance.

Mr. GRAHAM. Despite this importance, the Department of Energy has not requested full funding for this project in the President's Fiscal Year 2004, Fiscal Year 2005 and Fiscal Year 2006 budget request as originally proposed in the report to Congress entitled ''Disposition of Surplus Defense Plutonium at Savannah River Site, February 2002.'' The funding shortfalls will add to the existing 3-year delay caused by the negotiations between the Russian and U.S. Governments regarding liability for the project. However, with agreement between the U.S. and Russia on liability, the administration has no reason not to request full funding in next year's budget. It is vital that in the next budget the administration proposes fully funding the MOX program at a level that will bring this project closer to its original schedule.

Mr. DOMENICI. I agree with the Senator from South Carolina that the administration needs to fully fund this project in fiscal year 2007 and thereafter. Without a viable disposal solution, the cleanup of the Hanford Site and arrangements for decreasing inventories of plutonium at Lawrence Livermore National Laboratory and the

Pantex Plant will cost taxpayers hundreds of millions of dollars annually for storage and related security costs.

Mr. GRAHAM. Never hesitant to support missions in support of our national defense, the residents of South Carolina took considerable risk by allowing shipments of defense plutonium to be sent to the Savannah River Site from Rocky Flats and other DOE sites in advance of the construction of the MOX plant. In addition to supporting DOE's efforts to consolidate plutonium and accomplish the goals of the plutonium disposition program, this agreement greatly assisted DOE's efforts to expeditiously close Rocky Flats, resulting in considerable cost savings for DOE.

In a sign of good faith to the State of South Carolina, language was negotiated between the State of South Carolina and the Federal Government that required the Department of Energy to convert one metric ton of defense plutonium into fuel for commercial nuclear reactors by 2011 or face penalties of $1 million per day up to $100 million per year until the plutonium is either converted into the fuel or removed from the State. It has never been the intention of South Carolina to receive penalty payments; the residents of the State simply sought reassurances that weapons-grade plutonium would not remain at SRS indefinitely. South Carolina would not have accepted plutonium without this statute. However, until the plant is operational, it is critical to maintain the protections provided in Section 4306 of the Atomic Energy Defense Act, 50 USC 2566. This is the reassurance the Federal Government gives to South Carolina that it is DOE's intention to see this project through.

Mr. DOMENICI. I recognize the importance of that language. The appropriations bill includes a 3-year delay in the penalty payment language to reflect the delays caused by the Russians in negotiating a liability agreement. This delay does not allow DOE to withdraw support for the program. Any effort to eliminate funding for this project will likely foreclose a disposal pathway for plutonium stored at Savannah River causing the Department to pay the State of South Carolina up to $100,000,000 per year in fines starting in 2014.

Mr. GRAHAM. It is also my intention to make a technical correction, in the future, to language contained in the conference report to the Fiscal Year 2006 Energy and Water Appropriations Act. This conference report contains a change to important authorizing language that would make these penalty payments ''subject to the availability of appropriations.'' I appreciate the willingness of the Senator from New Mexico to see that this is resolved.

Mr. DOMENICI. I understand the concerns of the Senator from South Carolina. I will work with the Senator to find a fair solution that does not impact existing Department of Energy programs, and in the event that the Department is unable to meet the statutory requirements for the Mixed Oxide Fuel Conversion facility, the solution ensures that South Carolina does not become the permanent storage site for defense plutonium.

Mr. GRAHAM. I thank the Senator from New Mexico and look forward to working with him to continue to fully support the construction and operation of the MOX facility.

CLARIFICATION ON FUNDS

Mr. DORGAN. I would like to ask the Senator from Nevada, Mr. REID, for clarification on funding that was included in the fiscal year 2006 Energy and Water appropriations conference report. Under the fossil energy research and development section, the report provided $6,000,000 for the Energy and Environmental Research Center for cooperative research and development. Was it not the intent of the conference committee that the funding identified for the Energy and Environmental Research Center be split with their partners in the fossil fuel research, the Western Research Institute, WRI, in Wyoming?

Mr. REID. That is correct.

Mr. DORGAN. Was it also the case that the $1,000,000 in funding for the Energy and Environmental Research Center under the fuels & powers account was meant to be exclusively for the Energy and Environmental Research Center in North Dakota as described in the report?

Mr. REID. That is correct.

Mr. DORGAN. I thank the Senator from Nevada.

DEPARTMENT OF ENERGY NATIONAL USER FACILITIES

Ms. CLINTON. First, I want to compliment the chairman and ranking member of the Energy and Water Subcommittee for their hard and successful work in leading the development of the Energy and Water bill that is before the body today. I know it is especially difficult to fund all of the important programs under the jurisdiction of this subcommittee, particularly in light of the significant needs of the Army Corps of Engineers to respond to the calamitous impact of Hurricane Katrina on the lives of so many Americans.

However, it seems to me that the funding pressures faced by the subcommittee resulted in the programs of the Office of Science being funded at a level significantly below the value of these programs to the future security and economic health of the Nation.

When the Senate passed the Energy and Water Appropriations bill, an appropriation of $419,741,000 was included for the Department of Energy's nuclear physics program, an increase of $49 million over the President's budget request, according to the Committee on Appropriations' report, to ensure full utilization of experimental facilities. The House-passed bill included an amount of $408,341,000, also including adequate funds to restore operation time of the facilities in the nuclear physics program.

The conference report accompanying the bill before the Senate provides $370,741,000, the amount of the President's budget request. Due to severe budget constraints, the conferees were unable to retain the increases provided in the House and Senate bills for national user facilities, including the increase for the Relativistic Heavy Ion Collider, RHIC, at the Brookhaven National Laboratory in New York and the Jefferson Laboratory in Virginia. I understand the allocation for the conference bill reduced the total amount available. I also understand the Senate-passed bill was about $1.5 billion above the House bill and that the conference bill allocation provided for a split of that additional amount leaving an increase of $750 million over the House-passed bill. I further understand that the vast majority of the $750 million in new funding was provided to the Army Corps of Engineers for flood control and navigation projects in the wake of Hurricanes Katrina, Ophelia, Wilma and others. Under the circumstances, this was a wise investment of our Nation's resources.

However, an unintended consequence of these cutbacks is a negative impact on the Brookhaven National Laboratory in my State of New York, where the Relativistic Heavy Ion Collider, known as RHIC, is a key nuclear physics facility with many user groups in our region and elsewhere. I am told that this amazing major facility will be severely impacted by the amount approved by the conference agreement for nuclear physics. We had urged the Committee to approve additional funds above the President's budget request to ensure the continued operations of this facility at last year's level. The budget request was inadequate to begin with, principally because of the increased power costs that have occurred in our area to operate the facility for experiments for approximately 30 weeks operating time. Unfortunately, the situation with the power costs has worsened.

Mr. WARNER. We are facing similar problems at the Jefferson Laboratory in Virginia. As the chairman knows, the Jefferson Lab in Newport News, VA, is one of our basic research labs that would be negatively impacted by this funding level.

Specifically, as a result of this cut the Jefferson Lab will have to reduce the physics output of this world-leading laboratory by 25 percent. Just last month the National Academy of Sciences issued a report titled ''Rising Above the Gathering Storm.'' That report underscored that the Nation's economic health is seriously at risk without a sustained investment in science. The report noted that in Germany, 36 percent of undergraduates receive their degrees in science and engineering. In China the figure is 59 percent, and in Japan 66 percent. In the United States the corresponding figure is 32 percent.

It seems to me that this is a time when the Nation needs to invest in science, not cut science programs. At the Jefferson Lab we need to invest in the 12GeV upgrade necessary to sustain the pace of scientific discovery, not cut programs.

Mr. SCHUMER. My understanding is that the conference amount for nuclear physics may not provide sufficient funds for the RHIC facility. Because of the increased power costs and other factors, I am advised that without an increase in funding it is possible that there will not be any experimental operations in this fiscal year. I think we can all agree that is a bad and unintended outcome.

Mr. ALLEN. Mr. Chairman, you and Senator REID, the ranking member, have long been strong supporters of our national labs and specifically the work done at the Jefferson Lab and Brookhaven National Lab. The questions that we collectively pose relate to how we can repair the unintended damage done by this funding level. It is my understanding that the actual bill only provides funding for the Office of Science and that the Department has wide discretion to reallocate those funds among the various programs. Does the Department of Energy have the flexibility and authority to move funds around or to reprogram funding to help to alleviate situations such as this?

Mr. DOMENICI. The Department does, indeed, have broad reprogramming authority.

Mrs. CLINTON. I understand that these reallocations or reprogramming usually require approval by the subcommittee. Will both the chairman and ranking member join us, in writing, in an effort to urge the Department to reprogram funds to ensure reasonable operating times for these vital national user facilities during fiscal year 2006?

Mr. DOMENICI. Thank you for highlighting this matter. Senator REID and I agree that the programs of the Office of Science, including nuclear physics, merit appropriate consideration for additional funding under the circumstances. I appreciate the efforts of the Senators to provide examples of the impacts on one of our basic research laboratories of the funding levels provided by this conference agreement. I pledge my efforts to work with the Department and other Congressional leaders to help resolve this issue.

Mr. REID. I also pledge to work with the Department and affected Members of this body to reach an acceptable outcome.

AUBURN DAM

Mrs. FEINSTEIN. Mr. President, I rise to address a provision in the Energy and Water appropriations conference report, which requires the Bureau of Reclamation to produce a special report analyzing costs and benefits associated with constructing an Auburn Dam.

As part of that report, I believe it is critical that the Secretary of the Interior should utilize the expertise of U.S. Geological Survey to produce an up-to-date assessment of the seismic hazards associated with Auburn Dam.

I would also like to make it clear that this Auburn study cannot become a distraction from the vital work that needs to be done right away to protect Sacramento from a tragic flood.

I am deeply concerned with the lack of adequate flood protection for Sacramento. Sacramento is the only major United States city without 100-year flood protection.

The Army Corps of Engineers has reviewed six other major flood-prone cities: New Orleans, St. Louis, Dallas, Kansas City, Omaha, and Tacoma. All of these cities have at least 200-year flood protection.

Our top priority has to be to quickly shore up levees and improve Folsom Dam to protect Sacramento from a 200-year flood. Until this is complete, 300,000 people are at risk from catastrophic flood.

With respect to the conference provision, there are other issues involved with Auburn Dam, such as who would pay for the project, and the potential environmental effects of flooding 50 miles of the American River. But today I would like to focus on the seismic risk issue.

This is not the first time that building an Auburn Dam has been proposed. In the late 1960s construction began on an Auburn Dam. Construction continued, and $200 million was spent, until 1975, when an earthquake occurred nearby on a previously unknown fault. This earthquake forced a reexamination of the risks involved.

According to a 1980 Bureau of Reclamation report, if an earthquake caused the Auburn Dam to fail, Folsom Dam would be overtopped by a water surge only minutes later.

Most of the Sacramento area, an area inhabited by 750,000 people, would be flooded in a matter of hours, making evacuation difficult. Floodwater would be fast-moving and as deep as 40 feet, destroying houses and lowering chances of rooftop survival.

The risk of earthquake and its effects, which stopped construction back then, has not gone away. That's why it is so critical that Congress know what the risks are, and take this into consideration when deciding whether to go forward with this dam.

It has now been 30 years since work at the proposed site was halted, and as a result, the seismic risk assessments are out-of-date.

The most recent comprehensive study of seismic hazard issues associated with the dam project was produced by the U.S. Geological Survey in 1996, nearly 10 years ago. Even when this report was written, the science of seismic hazard assessment had already progressed considerably since most of the data on the dam project were collected in the 1970s.

The report called for additional study and analysis, much of which was never undertaken. This need for study and analysis still exists.

The Auburn Dam, if constructed, would sit on part of the Foothills fault system. The faults in the area of the proposed dam site are currently considered inactive, but were active in the past. The U.S. Geological Survey should use the best science available to evaluate past earthquakes, as well as the potential for future earthquakes, in the vicinity of the proposed dam.

One potential risk comes from a ''reservoir triggered earthquake.'' Filling a reservoir is well-established as a potential trigger for seismic activity. Even inactive faults may experience seismic events after reservoirs are built on top of them.

The weight and pressure of the water in the reservoir increases stress and weakens the effective strength of the rock. Water seeps into fissures and pores in the rock, and may lubricate faults, allowing movement even in some cases where friction would have held dry rock in place.

It has been suggested that the Oroville earthquake, a Richter scale magnitude 5.8 earthquake that occurred in 1975, may have been caused by filling the reservoir behind the Oroville Dam. The Auburn Dam, if constructed, would be built along the same fault system as the Oroville Dam.

Many other instances of these ''reservoir triggered earthquakes'' have been studied around the world. Recent global reviews list nearly 100 sites where filling reservoirs may have triggered seismic activity.

These studies show that the increased risk of earthquakes may last for years after a reservoir is filled. Both flood-control-only and permanent-waterstorage dams entail some risk.

The 1996 U.S. Geological Survey report for Auburn took this possibility very seriously. The report devoted a lengthy section to its consideration, and called for additional study.

The new report must address this issue. This is essential information that will influence Congress's decision on whether to proceed beyond preliminary feasibility studies. Do my colleagues agree?

Mr. DOMENICI. I understand the 1996 U.S. Geological Survey report called for a reevaluation of the dam design based on seismic data. A reevaluation should be performed using the best available science and the U.S. Geological Survey should produce an analysis integrating new data.

Mr. REID. I also concur. The potential consequences in this region are enormous. In California, assessing earthquake risks for a major project like this is an important part of the process. Concern about the possibility of earthquakes contributed to putting the project on hold in the first place. This concern remains important and should be addressed before deciding whether to proceed. The best way to do this is for the U.S. Geological Survey

to produce an updated analysis on the risks involved.

Mrs. FEINSTEIN. I thank my colleagues.

LAKE SAKAKAWEA RECREATION UPGRADES

Mr. DORGAN. Mr. President, I would like to commend the Senator from New Mexico, Mr. Domenici, and the Senator from Nevada, Mr. Reid, for their work in completing the fiscal year 2006 Energy and Water appropriations bill and conference report. I am aware of the very difficult choices they had to make in order to fall within their tight spending allocation. I appreciate their leadership on this important piece of legislation.

If I could, I would like to ask the Senator from Nevada a question regarding an activity at Lake Sakakawea, a Federal lake in North Dakota operated by the Army Corps of Engineers. For the past couple of years, Congress has asked the Corps of Engineers to extend docks and boat ramps around Lake Sakakawea as a result of the low lake levels.

Is it not the expectation of the conference committee that the Army Corps of Engineers continue its work on these recreation upgrades within the Corps' fiscal year 2006 operation and maintenance budget for Lake Sakakawea?

Mr. REID. It is true that while we were unable to provide funding above the President's request for this activity, the intent of the conference committee was that this activity would continue within its regular operation and maintenance allocation.

Mr. DORGAN. I thank the Senator from Nevada, and I yield the floor.

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

FUTUREGEN FUNDING

• Mr. BYRD. Senator REID, I want to thank you for your support and assistance in shepherding this conference report to this point today. I plan to support this bill, but I have a specific point of clarification that I would like to discuss with you regarding the provisions related to the fiscal year 2006 FutureGen funding.

I have not opposed the FutureGen program and have supported the administration's requests for this project over the last 3 years. However, I have and will continue to raise concerns about how this administration is going to fund the FutureGen program when it has not been able to provide adequate and sustained funding for core key fossil research and development programs. This situation appears only more ominous as our budgetary constraints worsen by the year and, adding to that, are new energy programs that were authorized in the Energy Policy Act of 2005 which will further heighten and constrain funding pressures.

The fiscal year 2006 Energy and Water Conference Report provides the $18 million for FutureGen that the administration has requested. However, even larger funding requests are going to be required if this initiative is to move forward according to its schedule. It is my understanding that the Congress has deferred $237 million of clean coal technology funding until fiscal year 2007 and will give full consideration to the administration's funding requests for the FutureGen initiative utilizing these funds. Would it be your expectation that the Congress will only consider the administration's FutureGen requests from the deferred amount contingent upon the administration providing full funding requests for the clean coal and other fossil energy research, development, and demonstration programs, especially the Clean Coal Power Initiative that was woefully underfunded in fiscal year 2006?

Mr. REID. Senator, that would be my understanding and expectation.

Mr. BYRD. I thank the Senator for that clarification. When there are so many other unmet fossil energy funding needs, as I have and will continue to reiterate, I cannot and will not support such a transfer from deferred funds, in whole or in part, to the FutureGen initiative until all other critical fossil energy programs are fully funded to the satisfaction of the Appropriations Committee in fiscal year 2007 and future years. I will certainly consider new moneys requested in the administration's budget request, but I will first prioritize other key fossil energy programs and other needs as a priority above the FutureGen program from deferred funds. This administration has been playing shell games with FutureGen. They have been attempting to rob Peter to pay Paul which is simply masking the underlying problem of continued inadequate funding commitments for other core fossil energy programs.

Would it also be the Senator's understanding that other fossil energy programs have equal, if not greater, funding needs and that there is no guarantee that any portion of the $237 million in the deferred clean coal technology fund will be transferred to the FutureGen program in fiscal year 2007 or future years. Should the administration or other interested parties expect that the deferred amount will be set aside, in whole or in part, for FutureGen in fiscal year 2007 or beyond?

Mr. REID. Senator, I agree that the administration needs to provide more adequate funding to the fossil energy research, development, and demonstration accounts. I also agree with you that there should be no assumption by the administration, Members of Congress, State governments, or any other parties that there is a guarantee that any funding, including the administration's future budget request for FutureGen will be provided by the Congress, given the austere budget environment that we are in. It is my understanding that $237 million is deferred and is available in fiscal year 2007 and beyond for a number of pressing fossil energy funding needs. The FutureGen program will only be given consideration for such deferred amounts if and only if all other critical fossil energy programs are fully funded, especially the Clean Coal Power Initiative.•

Mr. REED. Mr. President, the second storm surge from Hurricanes Katrina and Rita—high energy prices—threatens to overwhelm working families and senior citizens. The Energy Information Administration forecasted that households heating with natural gas will spend $306, or 41 percent, more for fuel this winter than last winter; households primarily using heating oil can expect to pay $325, or 27 percent, more; and households heating primarily with propane can expect to pay $230, or 21 percent, more.

Low-income families and seniors need assistance from the Federal Government in order to guarantee energy security in this high price environment. To provide immediate help this winter, I am working with Senator COLLINS to secure $5.1 billion in funding for the Low-Income Home Energy Assistance Program. Over the last 4 weeks, we have offered two amendments to increase funding for LIHEAP. While a majority of the Senate supported these amendments, we have been unable to reach the required 60 vote supermajority needed to waive the budget point of order on emergency spending.

Oil companies reported record profits for the third quarter of this year. As oil prices go up, low-income hard working Americans struggle to pay their heating bills. That is why fully funding LIHEAP is vital, and I believe oil companies should help shoulder the cost through a temporary, one-year windfall profit tax on integrated oil companies.

The President also has been silent, failing to ask for any funding for LIHEAP in the supplemental appropriations request he sent to Congress. In addition, Energy Secretary Bodman has repeatedly stated that the administration is against a windfall profits tax.

The Administration's National Energy Policy Report, the National Petroleum Council's report, Balancing Natural Gas Policy, and the National Commission on Energy Policy's report, Ending the Energy Stalemate, emphasized that energy efficiency is essential to managing the nation's short- and long-term energy challenges. Unfortunately, despite all of the agreement, federal funding for energy efficiency is not keeping pace.

In September, Senator SNOWE and I wrote a bipartisan letter signed by 33 of our colleagues urging the Administration to request $500 million for the Weatherization Assistance Program, WAP, and $100 million for the State Energy Program, SEP, in the wake of Hurricanes Katrina and Rita. President Bush and Secretary Bodman called on the American people to conserve energy and invest in energy efficiency,

and the American people are responding. I am disappointed that the administration did not seek additional funding for these key programs in their supplemental appropriations request.

Indeed, SEP helps states implement energy efficiency and energy emergency preparedness programs in all sectors of the economy, thereby, reducing energy consumption for residential consumers, schools, hospitals, the agricultural sector, commercial enterprises, and industry. For every Federal dollar invested in SEP, over $7 is saved in energy costs. SEP funds would immediately be directed to energy efficiency projects to bring energy usage down. Instead of our bipartisan request of $100 million, the Energy and Water Appropriations Conference Report provides only $36 million for the program in FY2006. This is almost a 20-percent cut from this year's funding level. This cut means States will not be able to provide rebates to homeowners for energy conservation, schools and hospitals will be ill-equipped to reduce energy usage, and small business will not receive needed energy efficiency upgrades. Basically, every sector of the economy will be harmed in the midst of an energy crisis.

I hope that the Senate will provide more funding for LIHEAP, SEP, and the weatherization program before the worst of the winter season hits.

Mr. BINGAMAN. Mr. President, today we are voting on the conference report for the 2006 Energy and Water Development appropriations Act. On the whole, the conference report contains many items well worth supporting, including funding for a number of important water and energy projects in New Mexico.

Regardless of my support for the report as a whole, I would like to take this opportunity to express my strong concern with a provision inserted into the legislation without any debate, and which I believe represents a setback to sound public policy.

Section 121(b) of the bill is a very short provision addressing endangered species issues in the Middle Rio Grande in New Mexico. It amends an existing law enacted in Public Law 108–447 which holds that a March 2003 biological opinion addressing water operations in the Middle Rio Grande fully satisfies the requirements of the Endangered Species Act, ESA. I had supported the original provision because a thorough review of that biological opinion indicated that it was based on a credible interpretation of the best available science and contained reopeners that ensured the biological opinion would be amended if it failed to meet its objectives.

Section 121(b) goes much farther and provides legal protection to any amendments to the 2003 biological opinion. The result of section 121(b) is that Congress will now take the unprecedented step of providing legal protection to the environmental analysis and decisions of a Federal agency before we know what the analysis looks like, or have a chance to assess the impacts of any decisions. The ESA requires that any analysis be based on, and reflect the use of, the best available scientific and commercial data. Section 121(b) undermines that requirement and gives the U.S. Fish & Wildlife Service a blank check in issuing a modified opinion that can have far-reaching impacts to both the environment and the rights of water users in the Middle Rio Grande basin.

There are a variety of scenarios that could develop over the next decade necessitating significant changes to the biological opinion. I am very uncomfortable with providing the U.S. Fish and Wildlife Service, or any Federal agency for that matter, unchecked power when it has the potential to significantly impact the rights and interests of so many people. Looking at the bigger picture, I am equally disturbed that Congress, by disallowing any opportunity to challenge a Federal agency, is now effectively casting aside the use of the best available science as the standard by which environmental analysis and subsequent decisions should be measured. I don't think this represents good public policy.

Finally, over the last few years, there has been a commitment by a diverse group of interests in the Middle Rio Grande region to cooperate on creative approaches to address endangered species needs. The goal of this effort is to balance the need for environmental restoration with a recognition of the need to protect the interests of water users who are dependent on the limited supply provided by the Rio Grande. This group, which includes relevant Federal, State, and local entities, is capable of developing workable solutions to any future developments that may necessitate amendments to the 2003 biological opinion. I hope that section 121(b), by eliminating the ability to hold the Federal agencies to an objective standard, does not undermine the efforts of this group or its collaboration on these issues.

Ms. CANTWELL. Mr. President, I rise today to share my views on the conference report to accompany H.R. 2419, the Energy and Water appropriations bill. While I support this legislation, I do have significant reservations about certain provisions of the conference report before the Senate today. Most significantly, I am very disappointed with the funding level included for Hanford Site cleanup.

The Federal Government has a legal and moral obligation to cleanup the Hanford site and its nuclear legacy. The President budget sets the tone for the appropriations process. I was very concerned when the President's request slashed funds by more than $290 million from last year levels, jeopardizing compliance with cleanup milestones and putting the health and safety of our citizens at risk.

Among the most important risk reduction projects are the cleanup and treatment of waste stored in underground storage tanks near the Columbia River. At the Hanford site there are 177 underground storage tanks containing more than 53 million gallons of radioactive and toxic waste. Sixty-seven of these tanks are known to have leaked, allowing at least 1 million gallons of waste to seep into the soil.

Tank waste cleanup is critical to the overall effort in Hanford. I am extremely concerned about a recent report from the Department of Energy Inspector General that found significant problems with the administration's plan for tank waste cleanup in the C–Tank Farm. The audit found that the Department of Energy was overly optimistic and failed to account for problems encountered during previous retrieval operations.

The Department has known since January of this year, before the presentation of the President's budget, that the scheduled C–Tank completion date of September 2006 would likely be missed and project costs would more than double. Falling behind on the C–Tank Farm cleanup will jeopardize long term tank cleanup commitments.

Despite those challenges, the Department cut the tank cleanup program by $62 million in its fiscal year 2006 request. That request forced Congress to work within an incredibly limited budget environment to restore at least some of the funding necessary to keep tank cleanup on track. Fortunately, we could add $27 million in the conference report.

I remain concerned, however, that the Department has yet to publicly acknowledge that it will miss the C–Tank Farm Tri Party Agreement milestone, nor has it committed to adequate funding in fiscal year 2007. I urge the Department of Energy to quickly respond and propose a new appropriate cost estimate and cleanup schedule.

In order to fully reduce risk we must have the facilities necessary to treat the toxic and radioactive waste from Hanford tanks. The timely construction of the vitrification plant is critical to reducing risk and protecting our citizens. The facility was designed to treat most of the waste removed from the 177 underground tanks before its storage at the Hanford site or a national depository.

But in the face of design challenges, the administration's budget cut funding for vitrification plant construction—setting it at $58 million less than fiscal year 2005 funding levels. The Department said it needed to reduce funding in order to address the seismic issues with the design of the facility.

Despite both Houses of Congress supporting funding levels for the vitrification plant at least at the President's request level, this conference report reduces funding to $100 million below the already-low fiscal year 2006 request. This level of funding would be $158 million less than the fiscal year 2005 appropriations level.

Remarkably, the President has proposed a rescission of an additional $100

million in previously appropriated vitrification plant construction funds to address hurricane recovery efforts. In his letter to the Congress, the President labeled plant construction as a lower priority Federal program.

This cut comes at the same time that the administration has noted that the cost of the vitrification plant has increased by at least 25 percent. And language in the underlying report estimates that the cost of the plant may rise to $9.3 billion. Yet this administration continues to cut funding, jeopardizing long-term cleanup milestones.

I urge the administration to drop its proposed $100 million rescission, set forth a clear cost and schedule for the completion of the vitrification plant, and fund the vitrification plant in a way that does not jeopardize the health and safety of our region.

I do not support the funding levels for Hanford cleanup in this year conference report and hope that the administration will make a clear commitment with its fiscal year 2007 request. The Federal Government must keep its commitment. I hope the current administration will back its words with clear action.

Mrs. MURRAY. Mr. President, I appreciate the work that went into the bill this year, recognizing how difficult it was given the allocation and given the level of support by the administration. I am particularly concerned about some specific levels within the bill, like funding for our Nation's environmental management program within the Department of Energy's cleanup responsibilities. Specifically, the Waste Treatment Plant, or Vitrification Plant, at the Hanford site is one of those nationally important projects. The Hanford site played a critical role in support of national security efforts in World War II and the Cold War. As a result, tens of millions of gallons of radioactive waste was left behind. It is the obligation of the U.S. Government to clean up that site and the Department of Energy identified the Vit Plant as the flagship project in that cleanup effort.

Officials at DOE claim the administration is 100 percent dedicated to the project. Actions speak louder than words. The request for this fiscal year was $64 million below necessary funding, according to the Department's own out-year projections. On top of that, the supplemental package sent to Congress came with rescissions for ''lower-priority'' programs including a $100 million cut for the Vit Plant. How can cleaning up one of the most polluted sites in our country be deemed a lower priority? Given this lack of support from the administration, I understand how difficult the project is to defend this year, and understand the hesitation on the part of this subcommittee to go beyond the official request by this White House.

And while the cuts to the funding are deep, and while I have deep concerns about what they will mean for our Nation's commitment to cleaning up this dangerous waste, I do concede that it could have been worse.

I specifically thank Senator REID and his staff for his last-minute assistance in limiting the cuts to the Vit Plant and I thank the chairman for being receptive. When I met with Senator REID last week, he shared my concern for this project, and together we were able to fight back additional cuts.

I will continue to support the cleanup efforts at the Hanford site.

Mrs. FEINSTEIN. Mr. President, I rise today in support of the fiscal year 2006 Energy and Water appropriations conference report.

One of the most important things about this conference report is a program that it does not fund. The Robust Nuclear Earth Penetrator—also known as the ''bunker buster''—is not funded in this bill. I am proud that Congress—for the second year in a row—has stated clearly and unambiguously that we should not spend taxpayer dollars on this program. I hope the administration gets the message and does not request funding for developing this new generation of nuclear weapons next year.

This conference report includes $327 million for the National Ignition Facility at Lawrence Livermore National Laboratory. This funding means that construction of the National Ignition Facility, NIF, can continue. When it is completed in a few years, the NIF will help keep the United States nuclear weapons stockpile reliable, without facing the dangers of underground nuclear testing. A completed NIF is a key component of the National Nuclear Security Administration's Stockpile Stewardship Program to maintain the safety, reliability, and effectiveness of our Nation's nuclear stockpile. There are also many California-specific needs met in this bill.city

I am pleased that the conference report provides $37 million for the Federal-State partnership for California Bay-Delta Restoration, CalFed. The CalFed reauthorization took considerable effort on the part of many in Congress, but that effort has paid off, in this, the first authorized CalFed appropriations in 5 years. I am grateful to Senator DOMENICI and Senator REID for providing $2 million over the President's Budget request for this program in the Senate bill and I am pleased that this allocation was maintained in conference with the House.

These funds will contribute to the much needed improvement of California's water supply infrastructure and protection of aquatic ecosystems. Among the elements of a balanced CalFed program that are in progress are feasibility studies on the enlargement of several reservoirs, improved water conveyance, ecosystem restoration, and water quality projects. The improvements we make to California's water infrastructure now will head off a supply crisis with water, similar to the one we faced with energy a few years ago.

This conference report inc1udes funding for specific flood control priorities in California. My State faces a number of significant flood threats. The city of Sacramento, the surrounding areas like Marysville and Rancho Cordova, and the Sacramento-San Joaquin Delta face some of the greatest flood danger in the Nation. Currently, much of Sacramento is below 100-year flood protection. This legislation allocates $39 million to improve flood control in Sacramento and provides funding to ensure that other regional flood control projects are ready to go to construction next year.

While the funds in this bill are a good start, I will continue to seek additional funding to protect the Sacramento metropolitan area from catastrophic flooding.

The conference report also includes $5 million for Upper Newport Bay Restoration. Upper Newport Bay is the largest functioning full tidal wetland in southern California. However, the bay's ability to sustain wildlife is threatened due to decades of increasing sedimentation related to rapid urbanization of the watershed. As a result, open water areas are disappearing in the bay, tidal circulation has diminished, and shoaling is occurring within Federal and local navigation channels and slips. This project will restore degraded habitat and reestablish wetland and wildlife habitat areas.

I am also pleased that the conference report includes $61.65 million, $11.65 million above the President's Budget request, for the Santa Ana River Mainstem Project. These funds will construct flood control improvements to protect over 3 million people in Orange, Riverside, and San Bernardino counties.

One issue that concerns me in this conference report is a requirement for the Bureau of Reclamation to complete a special report to update the analysis of costs and associated benefits of the Auburn Dam on the American River. I am concerned that the reporting requirements do not include an updated assessment of the risks of an earthquake, risks that are serious enough to have caused the termination of earlier work on the Auburn Dam in 1975.

I again want to express my congratulations to Chairman DOMENICI and Senator REID and want to thank them for the level of support given to California in this conference report.

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

● Mr. BYRD. Mr. President, if the U.S. is to remain competitive and keep pace with its growing energy demands, then we must take stock, as a nation, of our energy security, economic growth, and environmental protection and make these issues top national priorities. We cannot achieve greater energy security with our continued, piece-meal efforts. It is time to devote new innovation and ingenuity to energy policy and blaze a path forward. We must strive to be free

of the chains of foreign oil. To do that, we must seriously invest in the energy resources that we have here at home, and coal should be at the heart of that effort.

The Energy Policy Act of 2005, which I supported and which was signed by the President in August 2005, made many promises to the country on energy policy. To make good on those promises, the administration must be willing to put financial support behind these initiatives. Will this administration do so in subsequent budget requests for the clean coal and many other important energy programs?

The Energy Policy Act of 2005 is only a way station on a long journey and more work remains ahead. It is a start, and I am committed to continuing to work toward that goal. Yet I continue to be concerned about this administration's commitment to funding fossil energy research, especially because new clean coal and other energy programs were authorized in the Energy bill. There is only so much blood that one can squeeze out of a turnip. So where are we going to find the funding for these new programs?

In related matters, H.R. 2419, the fiscal year 2006 Energy and Water Conference Report provides sufficient funding for the fossil energy research and development, R&D, programs for the Department of Energy, DOE. But this effort requires a much more sustained and increased commitment in future years if this Nation is to be successful in going beyond an incremental approach toward new breakthroughs on the use of fossil energy resources. In this conference report, I worked to ensure that there was adequate funding for coal R&D at the National Energy Technology Laboratory, the Nation's premier Fossil Energy Laboratory.

In addition to coal, other energy research investments that must not be overlooked are within the oil and natural gas R&D programs. Oil and natural gas provide 60 percent of America's energy needs, and demand for both will continue to rise, resulting in significant price increases. By 2025, U.S. reliance on fossil fuels is expected to grow from the current 85 percent to 90 percent. But the administration's budget proposal for oil and natural gas technology R&D for fiscal year 2006 was reduced by 75 percent from fiscal year 2005 levels. The administration's fiscal year 2006 budget request was $20 million for both programs. The funds were to be used to conclude the oil and natural gas programs. The DOE's R&D spending for oil and natural gas has consistently ranked at the bottom of the scale. If the United States is to maintain its ability to produce its domestic supplies for oil and natural gas at a reasonable cost to consumers, then Federal expenditures on R&D must fill some of the void left by the private sector, primarily independent producers.

Furthermore, how is this administration going to fund FutureGen when it has not been able to provide adequate and sustained funding for other fossil energy programs? The fiscal year 2006 Energy and Water Conference Report provides the $18 million for FutureGen that the administration has requested. However, even larger funding requests are going to be required if this initiative is to move forward according to its schedule. I stand behind the agreement reached in the conference report, but the Congress will consider its FutureGen requests contingent upon the Administration maintaining adequate funding for other clean coal and fossil energy programs.

When there are so many other unmet fossil energy funding needs, I cannot and will not support the transfer of monies from the clean coal technology account to a FutureGen account. In fiscal year 2007 and beyond, I will not support the transfer of any moneys, in whole or in part, to the FutureGen initiative that are not a part of the administration's request unless and until other critical fossil energy programs are fully funded. This is simply robbing Peter to pay Paul and masks the underlying problem of continued inadequate funding commitments for the fossil energy programs by this administration. There are other fossil energy programs that have equal, if not greater, funding needs.

Additionally, the Clean Coal Power Initiative, CCPI, is a program that was initiated in 2001, to demonstrate the economically and environmentally acceptable use of coal. The CCPI was the successor to the long and successful Clean Coal Technology Program that I initiated in 1985. The CCPI program, if pursued, will continue to lead to the successful development of a set of coal-based technologies that will be cost effective and highly efficient and achieve greater control of air and water emissions compared to currently available technology.

President Bush committed to funding the CCPI program during his first campaign speech made in West Virginia in 2000. The President pledged to provide $2 billion over 10 years for this program, yet the administration's budget requests have not met that goal. Over a period of 5 years, the President has requested a total of approximately $530 million, including only $50 million this year. This is barely more than half of the funding pledged to the program. A great deal more funding will be required in fiscal year 2007 and beyond if the program is to remain on a schedule consistent with the President's commitment.

The DOE is in the practice of issuing a solicitation every other year and has done so twice to date. This practice has been required in order to collect enough appropriations for a single solicitation. While I am fully aware of the fiscal limits we currently face and the immense pressure on the budget, it is crucial that the CCPI reach the necessary funding level in order to initiate a solicitation in fiscal year 2007. The fiscal year 2007 CCPI budget request must be substantially higher than the fiscal year 2006 request in order to maintain a schedule of solicitations every second year, and I strongly encourage the administration to submit a request in an amount sufficient to initiate a third CCPI solicitation in fiscal year 2007.

Finally, the Office of Fossil Energy has been lacking in leadership for far too long. There remains a strong team in place, along with a new director, at the National Energy Technology Laboratory, but that must be matched with a strong Fossil Energy Assistant Secretary. This position has now been vacant for at least 20 months. This post should be filled by someone who can bring strong technical, policy, and managerial experience and who can work well with a variety of constituencies.

In conclusion, I would like to thank Senators DOMENICI and REID for their leadership and assistance on this conference report. I would also like to thank Senator DOMENICI's staff Scott O'Malia, Roger Cockrell, and Emily Brunini as well as Senator REID's staff, Drew Willison and Nancy Olkewicz for their hard work. This is the first year that fossil energy R&D programs were included in the Energy and Water Appropriations bill. This is a good conference report given the very tough fiscal circumstances that we faced. I have urged Senators DOMENICI and REID to give greater oversight and scrutiny to the administration's fossil energy requests and look forward to working with them on this important matter next year. Because our Nation's energy security is so important, the fossil energy R&D programs, especially the clean coal programs, require strong support. I will remain ever watchful and strongly supportive of them in the coming years.●

Mr. DOMENICI. I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from New Mexico yields back the remainder of his time.

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

The PRESIDING OFFICER. Is there a sufficient second?

Apparently there is.

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

The legislative clerk called the roll.

MR. MCCONNELL. The following Senators were necessarily absent: the Senator from Montana (Mr. BURNS), the Senator from North Carolina (Mr. BURR), the Senator from Texas (Mr. CORNYN), the Senator from Arizona (Mr. MCCAIN), and the Senator from Alaska (Ms. MURKOWSKI).

Further, if present and voting, the Senator from Texas (Mr. CORNYN) and the Senator from Montana (Mr. BURNS) would have voted ''yes.''

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Delaware (Mr. BIDEN), the Senator from California (Mrs.

BOXER), the Senator from West Virginia (Mr. BYRD), the Senator from New York (Mrs. CLINTON), the Senator from New Jersey (Mr. CORZINE), and the Senator from Massachusetts (Mr. KENNEDY) are necessarily absent.

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

The result was announced—yeas 84, nays 4, as follows:

[Rollcall Vote No. 321 Leg.]

YEAS—84

Akaka	Ensign	McConnell
Alexander	Enzi	Mikulski
Allard	Feinstein	Murray
Allen	Frist	Nelson (FL)
Baucus	Graham	Nelson (NE)
Bennett	Grassley	Obama
Bingaman	Gregg	Pryor
Bond	Hagel	Reed
Brownback	Harkin	Reid
Bunning	Hatch	Roberts
Cantwell	Hutchison	Rockefeller
Carper	Inhofe	Salazar
Chafee	Inouye	Santorum
Chambliss	Isakson	Sarbanes
Cochran	Jeffords	Sessions
Coleman	Johnson	Shelby
Collins	Kerry	Smith
Conrad	Kohl	Snowe
Craig	Kyl	Specter
Crapo	Landrieu	Stabenow
Dayton	Lautenberg	Stevens
DeMint	Leahy	Talent
DeWine	Levin	Thomas
Dodd	Lieberman	Thune
Dole	Lincoln	Vitter
Domenici	Lott	Voinovich
Dorgan	Lugar	Warner
Durbin	Martinez	Wyden

NAYS—4

Coburn	Schumer
Feingold	Sununu

NOT VOTING—12

Bayh	Burr	Corzine
Biden	Byrd	Kennedy
Boxer	Clinton	McCain
Burns	Cornyn	Murkowski

The conference report was agreed to.

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

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

The motion to lay on the table was agreed to.

DEFENSE AUTHORIZATION

Mr. LEVIN. I ask unanimous consent that the Senator from Hawaii proceed in morning business for 5 minutes and then we would turn to the committee bill pursuant to the unanimous consent agreement.

The PRESIDING OFFICER. Is there objection?

The Senator from Virginia.

Mr. WARNER. Reserving the right to object, and I will not object, I wish to inform Senators that when we return to the bill, I know the distinguished colleague from Michigan and I are going to debate the two amendments that are pending relating to Iraq, one submitted by this side of the aisle and one by that side of the aisle, and then such discussions as the Senator from South Carolina and the Senator from Michigan may have on the habeas corpus issue, will that be dealt with at all tonight?

Mr. LEVIN. I think that is going to be up to the Senator from South Carolina as to what progress he is making on it.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. We will continue to have a debate tonight on those amendments that are going to be voted on in the morning and such other matters as any Senator wishes to bring up relative to the bill.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. We should again put our colleagues on notice that there is very limited time tomorrow morning under the unanimous consent agreement. There was an effort made to extend that time. The effort did not succeed. So there will literally be 30 minutes tomorrow morning equally divided between both Iraq amendments and the habeas corpus matter, which is a very small window of time tomorrow morning. We would urge, I think my good friend from Virginia would agree, that the Senators who wish to speak on either of those matters should make a real effort to get here tonight.

Mr. WARNER. Mr. President, I would only say let us not leave the impression that this side of the aisle is rushing to judgment. This framework of votes and amendments were carefully worked out on Thursday evening. The Senate has been in session since 2 today. There has been quite a bit of activity and opportunity for Senators to speak. I repeat, we are going to continue on shortly after our two colleagues finish.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Hawaii will be recognized for 5 minutes as in morning business.

The Senator from Hawaii.

IN HONOR OF NATIONAL BIBLE WEEK

Mr. AKAKA. Mr. President, I rise today to celebrate one of the most important books in the history of mankind: the Bible. As the Senate cochairman of the 2005 National Bible Week, it is my honor to join the National Bible Association and our Nation's citizens in celebrating the Good Book and its teachings. During the week of November 20 to 27, I encourage everyone to participate in this fine tradition by reading and reflecting on the important lessons of the Bible.

As a child growing up in Hawaii, my parents introduced me to the Bible and it has always played an important role in my life. I turn to it on a regular basis in search of inspiration, guidance and strength. The Bible is a resource of profound but fundamental truths that retain relevance throughout the ages. They are the lessons that serve as the building blocks of good citizens, good families, good communities and good government.

One of my favorite scriptures in the Bible teaches us that God loved us so that He sent us His only begotten Son so that we might live through Him. Because God so loved us, we ought also to love one another and His love will be perfected in us. In this time of international strife, natural disaster, and political turmoil, this basic instinct of caring for our fellow man, of love for our neighbor, is a good place to begin.

The Holy Bible is one of man's greatest legacies. I congratulate and commend the National Bible Association for its efforts to promote the Good Book and to encourage better understanding of its universal truths among people of all faiths. Aloha ke Akua. God is love.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, it is the understanding of the distinguished Senator from Michigan and myself that the Senator from Minnesota has a period of time to speak with regard to the bill. Is that our understanding?

Mr. DAYTON. I thank you, Mr. Chairman.

Mr. WARNER. Then the distinguished Senator from South Carolina desires to enter into a colloquy with the distinguished Senator from Michigan relative to the amendments by the Senator from South Carolina. Am I not correct on that?

Mr. LEVIN. If he is ready, I am happy to proceed.

Mr. WARNER. That will immediately follow the remarks of Senator DAYTON.

Mr. DAYTON. I don't want to deceive the chairman. My remarks are related to the remarks of last Veterans Day rather than the bill directly. I ask either that be accommodated or I speak as in morning business for a period of up to 12 minutes.

Mr. WARNER. We are in a period of morning business. The Senator is in no way restricted in what he wishes to address. We thought it was related to the bill, but whatever he desires.

The PRESIDING OFFICER. The Senator from Minnesota will be recognized to speak as in morning business.

IRAQ

Mr. DAYTON. Mr. President, last Friday, on Veterans Day, President Bush attacked those of us who questioned or criticized his conduct of the Iraq war. Once again, he tried to portray his critics as opposing our own troops or aiding their enemies. Once again, he was wrong. Once again, he tried to blame others for his mistakes and for the failures of his policies—mistakes and failures that have trapped 158,000 of America's best and bravest soldiers in Iraq for over 2½ years, since the fall of Saddam Hussein, with no end in sight.

Let's be clear that every person in this Senate supports our troops 1,000 percent. We provided every dollar requested for defense authorizations, appropriations, and supplementals with overwhelming bipartisan and often unanimous support. Some of us have tried to provide more funding than the administration would support for our

returning troops and veterans. We have never accused them of being against our troops or un-American.

Together, on the Senate Armed Services Committee on which I am proud to sit, Republicans and Democrats have repeatedly asked our civilian and military commanders: What more do you need to win this war as soon as possible? What do you need to bring our troops home as safely and quickly as possible, with the victory that they won in 3 weeks in the spring of 2003 secured, finally, by the Iraqis? Tell us what you need, and it is yours.

This Senate has not failed our troops. This Senator, a critic of your policies, has not failed our troops. You, sir, have failed our troops; and you, sir, have failed the American people by the failures of your policies in Iraq.

Last Friday, President Bush stood in front of a banner that said: ''Strategy For Victory.'' Two and a half years ago, he stood on the aircraft carrier *Abraham Lincoln* before a banner: ''Mission Accomplished.'' Unfortunately, he had the banners mixed up. If he had a ''Strategy For Victory'' 2½ years ago, we would have ''Mission Accomplished'' today.

The President accuses his critics of rewriting the history of this war. Nonsense. The history of this war was clearly enunciated by this administration and is available for all to reread. The President, the Vice President, and their top advisers repeatedly presented their rationales for this war and predicted its outcomes, and they were repeatedly wrong. On just about everything, they were wrong. I say that with sorrow because when the President of the United States is wrong, all Americans suffer the consequences.

There is no better or worse summary of the administration's prewar fallacies than the transcript of Vice President CHENEY's appearance on ''Meet The Press'' with Tim Russert the Sunday before the invasion began. I excerpted those remarks for brevity but without altering their meaning.

The Vice President said on the program, as he had said repeatedly during the past 7 months:

We believe Saddam Hussein has in fact reconstituted nuclear weapons.

We know he's out trying once again to produce nuclear weapons and we know he has a longstanding relationship with various terrorist groups, including the al-Qaida organization.

When Mr. Russert queried:

And even though the International Atomic Energy Agency said he does not have a nuclear program, we disagree?

Vice President CHENEY replied:

I disagree, yes. . . .We believe he has, in fact, reconstituted nuclear weapons. I think Mr. ElBaradei frankly is wrong.

Mr. Russert: If your analysis is not correct, and we're not treated as liberators, but as conquerors, and the Iraqis begin to resist, particularly in Baghdad, do you think the American people are prepared for a long, costly, and bloody battle with significant American casualties?

Vice President Cheney: Well, I don't think it's likely to unfold that way, Tim, because I really do believe that we will be greeted as liberators. I've talked with a lot of Iraqis in the last several months myself, had them to the White House. . . . The read we get on the people of Iraq is there is no question but what they want to get rid of Saddam Hussein and they will welcome as liberators the United States when we come to do that.

Mr. Russert: The army's top general said that we would have to have several hundred thousand troops there for several years in order to maintain stability.

Vice President Cheney: I disagree. . . . But to suggest that we need several hundred thousand troops there after military operations cease, after the conflict ends, I don't think is accurate. I think that's an overstatement.

Mr. Russert: We have had 50,000 troops in Kosovo for several years, a country of just five million people. This is a country of 23 million people. It will take a lot in order to secure it.

Vice President Cheney: . . . There's no question but what we'll have to have a presence there for a period of time. It is difficult now to specify how long. We will clearly want to take on responsibilities in addition to conducting military operations and eliminating Saddam Hussein's regime. We need to be prepared to provide humanitarian assistance, medical care, food, all of those other things that are required to have Iraq up and running again. And we are well-equipped to do that. We have got a lot of effort that's gone into that.

Mr. Russert: Every analysis said this war itself would cost over $80 billion, recovery of Baghdad, perhaps of Iraq, about $10 billion per year. We should expect as American citizens that this would cost at least $100 billion for a two-year involvement.

Vice President Cheney: I can't say that, Tim. . . . In Iraq you've got a nation that's got the second-largest oil reserves in the world, second only to Saudi Arabia. It will generate billions of dollars a year in cash flow if they get back to their production of roughly three million barrels of oil a day, in the relatively near future.

On every one of those key assertions, Vice President CHENEY was wrong. Whether he was misinformed, misguided, mistaken, or knowingly misleading the American people, I cannot say. I can say that he was consistently wrong. And because he and the President were wrong, over 2,000 of our best and bravest Americans have lost their lives in Iraq. Many thousands more have returned home wounded or maimed for life. Hundreds of thousands more have been separated from their families for years, with more separations for more years still to come.

Because the Bush administration's assumptions and expectations were wrong, because their preparations for post-Saddam Hussein Iraq were wrong, and because their predictions before and after the war began were wrong, America's standing in the world is worse than before. The terrorist organizations that hate the United States are stronger than before, and our national security is tragically and terribly weaker than before this war began.

When I voted against the Iraq war resolution in October of 2002, I said I hoped I was wrong and the war's proponents were right because the stakes were too high for partisanship. When I disagreed with President Bush's decision to invade Iraq in March of 2003, I said I hoped I was wrong and he was right because the stakes were too high for anything but patriotism.

I deeply regret when he has been wrong. I deeply regret the mistakes of his policies and the failures of his practices because a President's mistakes and failures become America's mistakes and failures. And America, the greatest Nation on Earth, the leader of the world's hopes and opportunities for peace and prosperity, America cannot afford mistakes and failures in this difficult and dangerous world, and this world cannot afford America's mistakes and failures.

Two and a half years after our troops toppled Saddam Hussein is too long for 158,000 of Americas's soldiers, the world's best and bravest, to still be doing the patroling, the policing, the fighting, the bleeding, and the dying in Iraq—too long, and there is no end in sight. It is because we support our troops, because they are our sons and daughters and we love them, that we want to bring them home safely as soon as possible with their military successes of 2½ years ago secured by Iraqis, not Americans.

The President and the Vice President could show their support for our troops by telling them and us what the strategy for victory in Iraq really is and how and when we will achieve it and what are the timetables and measures of that success or lack of it so our courageous fighting men and women and their families and their fellow Americans can know how they will win, when they will win. Those are the answers they and we deserve.

Mr. President, I yield the floor.

Mr. LEVIN. 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. GRAHAM. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER (Mr. CORNYN). Without objection, it is so ordered.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2006—Continued

AMENDMENT NO. 2524 TO AMENDMENT NO. 2515

Mr. GRAHAM. 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 South Carolina [Mr. GRAHAM], for himself, Mr. LEVIN, and Mr. KYL, proposes an amendment numbered 2524 to amendment No. 2515.

Mr. GRAHAM. 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 improve the amendment)

In lieu of the matter proposed to be inserted, insert the following:

SEC. ___. REVIEW OF STATUS OF DETAINEES.

(a) SUBMITTAL OF PROCEDURES FOR STATUS REVIEW OF DETAINEES AT GUANTANAMO BAY, CUBA.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees, and to the Committees on the Judiciary of the Senate and the House of Representatives, a report setting forth the procedures of the Combatant Status Review Tribunals and the noticed Administrative Review Boards in operation at Guantanamo Bay, Cuba, for determining the status of the detainees held at Guantanamo Bay.

(b) PROCEDURES.—The procedures submitted to Congress pursuant to subsection (a) shall, with respect to proceedings beginning after the date of the submittal of such procedures under that subsection, ensure that—

(1) in making a determination of status of any detainee under such procedures, a Combatant Status Review Tribunal or Administrative Review Board may not consider statements derived from persons that, as determined by such Tribunal or Board, by the preponderance of the evidence, were obtained with undue coercion; and

(2) the Designated Civilian Official shall be an officer of the United States Government whose appointment to office was made by the President, by and with the advice and consent of the Senate.

(c) REPORT ON MODIFICATION OF PROCEDURES.—The Secretary of Defense shall submit to the committees of Congress referred to in subsection (a) a report on any modification of the procedures submitted under subsection (a) not later than 60 days before the date on which such modification goes into effect.

(d) JUDICIAL REVIEW OF DETENTION OF ENEMY COMBATANTS.—

(1) IN GENERAL.—Section 2241 of title 28, United States Code, is amended by adding at the end the following:

''(e) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien outside the United States (as that term is defined in section 101(a)(38) of the Immigration and Naturalization Act (8 U.S.C. 1101(a)(38)) who is detained by the Department of Defense at Guantanamo Bay, Cuba.''.

(2) REVIEW OF DECISIONS OF COMBATANT STATUS REVIEW TRIBUNALS OF PROPRIETY OF DETENTION.—

(A) IN GENERAL.—Subject to subparagraphs (B), (C), and (D), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of any decision of a Designated Civilian Official described in subsection (b)(2) that an alien is properly detained as an enemy combatant.

(B) LIMITATION ON CLAIMS.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit under this paragraph shall be limited to claims brought by or on behalf of an alien—

(i) who is, at the time a request for review by such court is filed, detained by the Department of Defense at Guantanamo Bay, Cuba; and

(ii) for whom a Combatant Status Review Tribunal has been conducted, pursuant to applicable procedures specified by the Secretary of Defense.

(C) SCOPE OF REVIEW.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit on any claims with respect to an alien under this paragraph shall be limited to the consideration of—

(i) whether the status determination of the Combatant Status Review Tribunal with regard to such alien applied the correct standards and was consistent with the procedures specified by the Secretary of Defense for Combatant Status Review Tribunals (including the requirement that the conclusion of the Tribunal be supported by a preponderance of the evidence and allowing a rebuttable presumption in favor the Government's evidence); and

(ii) whether subjecting an alien enemy combatant to such standards and procedures is consistent with the Constitution and laws of the United States.

(D) TERMINATION ON RELEASE FROM CUSTODY.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit with respect to the claims of an alien under this paragraph shall cease upon the release of such alien from the custody of the Department of Defense.

(3) REVIEW OF FINAL DECISIONS OF MILITARY COMMISSIONS.—

(A) IN GENERAL.—Subject to subparagraphs (C) and (D), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of any final decision rendered pursuant to Military Commission Order No. 1, dated August 31, 2005 (or any successor military order).

(B) GRANT OF REVIEW.—Review under this paragraph—

(i) with respect to a capital case or a case in which the alien was sentenced to a term of imprisonment of 10 years or more, shall be as of right; or

(ii) with respect to any other case, shall be at the discretion of the United States Court of Appeals for the District of Columbia Circuit.

(C) LIMITATION ON APPEALS.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit under this paragraph shall be limited to an appeal brought by or on behalf of an alien—

(i) who was, at the time of the proceedings pursuant to the military order referred to in subparagraph (A), detained by the Department of Defense at Guantanamo Bay, Cuba; and

(ii) for whom a final decision has been rendered pursuant to such military order.

(D) SCOPE OF REVIEW.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit on an appeal of a final decision with respect to an alien under this paragraph shall be limited to the consideration of—

(i) whether the final decision applied the correct standards and was consistent with the procedures specified in the military order referred to in subparagraph (A); and

(ii) whether subjecting an alien enemy combatant to such order is consistent with the Constitution and laws of the United States.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), this section shall take effect on the day after the date of the enactment of this Act.

(2) REVIEW OF COMBATANT STATUS TRIBUNAL AND MILITARY COMMISSION DECISIONS.—Paragraphs (2) and (3) of subsection (d) shall apply with respect to any claim whose review is governed by one of such paragraphs and that is pending on or after the date of the enactment of this Act.

Mr. GRAHAM. Mr. President, at this time I would like to, in conjunction with my colleague Senator LEVIN, lay down this amendment, give a brief explanation of what it is designed to do, and I think we will vote on it tomorrow after we vote on Senator BINGAMAN's amendment.

No. 1, Senator LEVIN and his staff have been working on this, along with Senator KYL and other Senators, for the last couple of days. I do not know how to say it other than it has been a lot of fun. It has been tough at times, but I think we have come out with a product that the Senate can be proud of, and hopefully the country can be proud of when it comes to how to treat detainees at Guantanamo Bay.

Here is what we are trying to do. With my amendment, which we voted on last week, the concern I had was we were about to criminalize the war because of the Rasul case. Section 2241 of the habeas statute had been interpreted not to prohibit foreign alien enemy terror suspects from seeking habeas petitions in Federal court about their confinement and detainment as enemy combatants. The Rasul case was the result of the Supreme Court rejecting the Government's argument that Guantanamo Bay was outside the jurisdiction of the Federal court. They ruled that Guantanamo Bay was constructively within the jurisdiction of the Federal court, and in that opinion basically challenged the Congress.

Now that we have decided that, since there are no due process rights in place at the time, we are going to provide habeas petitions to these detainees until Congress comes in and says otherwise.

My amendment was, Congress being on record that the 2241 habeas statute has been used to provide habeas corpus rights by Congress to American citizens, that we do not intend for an enemy combatant or foreign national—someone captured in conflict against the United States—to have habeas rights before our Federal courts to complain about their confinement and their detention. In other words, we are not going to allow enemy prisoners of war the right to go into civilian court and start challenging their detention. The military commissions are operating at Guantanamo Bay with a different purpose. They are going to try people who are charged with violations of the law. Right now there are about 10 or 15 cases. There are almost 500 people who are being detained as enemy combatants. Last week, when Senator LEVIN was arguing with me about my amendment, I think he made some very good points. By working with him and others, Senator KYL and others, we have addressed some of the weaknesses in my original amendment. Senator BINGAMAN will have another amendment, and I think we deal with some of his concerns, too. I do see this as a win-win.

What we are trying to do, instead of changing what has been the rule of law for 200 years in terms of enemy prisoner rights, is create a process that not only mirrors the Geneva Convention but goes well beyond the Geneva Convention.

An enemy combatant is a legal term of art. It applies to those people involved in hostilities against the United

States but are not part of a Geneva Convention-recognized Army. The Geneva Convention uses the term ''irregular combatant.'' We have case law in the United States talking about enemy combatant. It deals with German saboteurs; those people who commit hostilities are engaged in acts of war but shed the cloak of being part of a uniformed force. So the term ''enemy combatant'' has been well recognized in our law.

What we do with an enemy combatant, once a person has been determined to be an enemy combatant, we can detain them similar to a prisoner of war. The Geneva Convention says if there is a question about whether a person's status is rightfully conferred whether you are a prisoner of war, enemy combatant, irregular combatant, or a civilian who has done nothing wrong, the Geneva Convention requires the host country to have a competent tribunal set up to determine status.

Since August of 2004, at Guantanamo, the Combatant Status Review Tribunal system has been in place. In my opinion, it is Geneva Convention article 5 tribunals on steroids. It gives a right to confront. It gives adversarial process to the suspected enemy combatant. It also allows a yearly review of an enemy combatant status. What they are looking at, at Guantanamo Bay, is whether a person was engaged in hostile acts against the United States in a regular fashion, whether the person has intelligence value to the United States or poses a threat. If one or two of those three conditions are met, they can be detained at Guantanamo Bay, and every year there is a reevaluation.

We have had some people caught up in the net, and we found later probably did not have all three requirements and they have been let go. We have also had about a dozen people caught up in the net in the war on terror who we thought were no longer a threat to the United States. We released them and a dozen at least have gone back to fighting. Some have been killed. Some have been captured yet again.

The process we use is important, but no process is perfect. We are trying to come up with a process the country can be proud of that applies the law of armed conflict standard and does not turn the war on terror into a crime. Right now every person sent to Guantanamo Bay will be offered a Combatant Status Review Tribunal hearing, which is well beyond what the Geneva Convention requires, to determine their status.

In addition to the yearly review, working with Senator LEVIN, Senator KYL, and others, we have come up with a right of every enemy combatant to go to Federal court. Instead of having unlimited habeas corpus opportunities under the Constitution, we give every enemy combatant, all 500, a chance to go to Federal court, the Circuit Court of Appeals for the District of Columbia. On top of everything else we are doing, they can challenge their status determination in a Federal court. The Federal court will look at the process involved in their individual case to see if it complied with the CSRT standards in terms of procedure and the standards that were to be used to determine whether a person was properly detained—the evidentiary standards, all other standards.

This will allow a Federal court oversight of any combatant status. It will be a one-time deal. It will not be an opportunity for the enemy prisoner to sue us about everything they can think of.

Now, that to me is unprecedented. That is well beyond what the Geneva Convention requires or envisions but is something we ought to do and we can be proud of because it is a Federal court oversight of a military action in a way that doesn't erode the military's ability to conduct a war. We can go to other people in the world and say, Our courts are now involved in looking at what we do. We can also say that Congress is finally involved because in addition to the rights I have described, under our amendment, the person who determines whether an enemy combatant is retained or released will be confirmed by the Senate. That will give the Senate a connection to what is going on in Guantanamo Bay.

If you change the CSRT regulations in any way, you have to send those changes to the Congress. That way we are involved. And we have a statement in our bill to make sure you do not use statements that were a result of undue coercion to determine if you are an enemy combatant.

So now we have Congress involved in an oversight function. We have the courts involved in oversight function. We have a due process right well beyond the Geneva Convention requirements. That is something we should be proud of.

Military commissions. There are 10 or 20 people potentially facing a military commission trial for what are violations of law of armed law conflict. The flaw in my amendment is it did not have a right of appeal from a military commission verdict to a Federal court. In World War II, the enemy saboteurs I described before were all tried by military commissions that President Roosevelt created by Executive order. Four of the six were sentenced to death. The Supreme Court reviewed the military commission process in the Quirin case and found that military commissions were lawful if the person being tried was truly an enemy combatant. So there is a historical precedent in our country for the Federal courts, the Supreme Court, to look at military commission trials to make sure they are lawfully constituted.

What we have done, working with Senators LEVIN, KYL, and others, we have created that same type appeal process for all military commission decisions. Under the amendment that we have come up with, any case resulting in a capital punishment finding—any person who is given the death penalty by the military commission—has an automatic direct right of appeal to the Circuit Court of Appeals for the District of Columbia and the court will determine if they were tried in a court up to the military commission standards and procedures and whether the military commission was constitutional.

Anyone who receives a sentence of 10 years or more will also have an automatic right to appeal the same court. If you receive a sentence less than 10 years, the Circuit Court of Appeals for the District of Columbia will determine whether they want to hear your case based on a petition for certiorari or something akin to it.

That, in essence, is what we are trying to do. In both instances, the CSRT procedures and the military commission procedures will be reviewed by Federal courts and the court will have the ability to determine whether they are constitutional and will have an ability in an individual case to determine whether the enemy combatant or the person tried under the military commission procedures will be reviewed by Federal courts to decide whether they are constitutional according to the rules and procedures that have been set up.

I defer to my friend and colleague, Senator LEVIN.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. I thank my friend from South Carolina for working on this matter as hard as he has. The Senator from Arizona has also worked hard. Many Members on this side have worked on this issue as well as the Republican side. There is a lot of thought that has been given to this matter.

The amendment approved last Thursday had some real problems with it, in my judgment, and I voted against it, as did 41 Senators. The amendment which was approved last Thursday, which is the one now awaiting this amendment, would have provided for review only for status determinations and not of convictions by military commissions.

As my friend from South Carolina pointed out, that is an omission which he and others acknowledge. It is a real indication of his commitment to try to figure out what the right course of action is, that he does acknowledge that omission. One of the reasons I voted against the amendment last Thursday is that it did not provide for that direct judicial review of convictions by military commissions. That is the major change in the amendment before the Senate, the so-called Graham-Levin-Kyl amendment which is before the Senate.

There are a number of other changes as well, but of all the changes, what this amendment does is add to the Graham amendment, which was agreed to last Thursday, adds a direct appeal for convictions by military commissions—not just for status determinations—and that direct appeal would, of course, go to a Federal court.

The amendment which we are going to consider tomorrow morning, after we consider the Bingaman amendment, will also provide for review of whether the standards and procedures which are referred to in the amendment are consistent with the Constitution and laws of the United States. Those are important words because all Members believe we must operate according to our Constitution. Our laws and the review which is provided for now, if we agree to this amendment to the adopted Graham amendment, would explicitly make it clear that the review of a court would look at whether standards and procedures that have been agreed to are consistent with our Constitution and our laws.

The other problem which I focused on last Thursday with the first Graham amendment was that it would have stripped all the courts, including the Supreme Court, of jurisdiction over pending cases. What we have done in this amendment, we have said that the standards in the amendment will be applied in pending cases, but the amendment will not strip the courts of jurisdiction over those cases. For instance, the Supreme Court jurisdiction in Hamdan is not affected.

However, what our amendment does, as soon as it is enacted and the enactment is effective, it provides that the standards we set forth in our amendment will be the substantive standards which we would expect would be applied in all cases, including cases which are pending as of the effective date of this amendment.

We will first vote on the Bingaman amendment tomorrow. I will vote for that amendment. It does preserve some habeas corpus review of constitutional issues relative to the detention of enemy combatants at Guantanamo Bay. It avoids habeas corpus review of less consequential issues, while enumerating the important issues which it would provide or permit habeas review of.

However, I cosponsored the Graham amendment with Senator GRAHAM because I believe it is a significant improvement over the provision which the Senate approved last Thursday, specifically for the two main reasons I identified. The direct review will provide for convictions by the military commissions, and because it would not strip courts of jurisdiction over these matters where they have taken jurisdiction, it does, again, apply the substantive law and assume that the courts would apply the substantive law if this amendment is agreed to. However, it does not strip the courts of jurisdiction.

My friend from South Carolina has pointed out what the scope of the review would be if this amendment was agreed to. I will read something which he made reference to that is important it be very clear as to what this grant of review is on page 6, paragraph B:

(i) with respect to a capital case in which the alien was sentenced to a term of imprisonment of 10 years or more, shall be as of right; or

(ii) with respect to any other case, shall be at the discretion of the United States Court of Appeals for the District of Columbia Circuit.

The scope of review is set forth. It gets the Congress back into the business of laying out the ground rules for these reviews, which has been the main goal of the Senator from South Carolina. It is a goal which I hope all share. We may disagree as to what the ground rules are, but I hope all Members share in that goal that Congress become reinvolved in setting the ground rules for both the commissions and for the tribunals which make the status determinations.

Again, it has been a very constructive effort on the part of Senator GRAHAM, myself, Senator KYL, and others who cosponsored and will vote for this. It makes a significant improvement over what the Senate did last Thursday. Again, I as one Senator will first support the Bingaman amendment, but if it is not agreed to, I will strongly urge our colleagues to vote for the Graham-Kyl amendment.

I support my friend from South Carolina.

The PRESIDING OFFICER (Mr. THUNE). The Senator from South Carolina.

Mr. GRAHAM. Mr. President, my hope is, as Senator LEVIN indicated, we are all doing this because we believe Congress has a role in this war. The executive branch has the job to lay the battle plans in place and to go after the enemy and be the Commander in Chief. But the Congress regulates captives of land and sea. The Congress is involved in issues about the detention, interrogation, and prosecution of enemy combatants and those who are trying to do harm to the country.

My goal over the last week was to do two things: get the Congress involved and for us to start thinking, what do we want, as a nation, to happen in this war now and down the road? What do we want to happen to the Sheik Mohammeds and people such as he? Do we want them to be common criminals? No. We want them to be people considered under the law of armed conflict.

My amendment last week was a direct result of what I think was a growing problem for our country. Section 2241 habeas rights were being exercised by noncitizen, foreign terrorist suspects to the point they were flooding our courts. They were bringing lawsuits.

I will give you an example. One Canadian detainee, who threw a grenade that killed an Army medic in a firefight and who comes from a family with longstanding al-Qaida ties, moved for a preliminary injunction forbidding the interrogation of him or engaging in ''cruel, inhuman, or degrading'' treatment of him.

In other words, he wanted the judge to come in and stop his interrogation before it started and to sit there basically and supervise it.

Another al-Qaida detainee complained about basic security procedures, the speed of mail delivery and medical treatment. He was seeking an order that he be transferred to the ''least onerous conditions'' at Gitmo and asking the court to order that Gitmo allow him to keep any books and reading materials sent to him and to ''report to the Court'' on ''his opportunities for exercise, communication, recreation, worship, etc.''

As I said last week, we never allowed enemy prisoners to go into civilian courts and ask judges to come over and take over the military prison in a time of war.

The Nazis did not get that right in World War II. We had plenty of Nazi prisoners housed in military prisoners all over the United States. They were not able to go to Federal court and complain about the books and the DVDs—they didn't have DVDs then—whatever they were asking for.

There is an ''emergency'' motion seeking a court order requiring Gitmo to set aside its normal security policies and show detainees DVDs that are purported to be family videos.

There is another lawsuit wanting the lawyer to have Internet access at Guantanamo Bay. That is what I objected to. This is not the law of armed conflict being applied. This is giving an enemy prisoner a right that no enemy prisoner has ever enjoyed before in the law of armed conflict. It was creating litigation against our troops.

There was one medical malpractice claim. There are over 40 cases suing for monetary damages. Can you imagine, after 9/11, if the Senate were asked the question, Do you want an al-Qaida suspect who is captured to be able to go into Federal court, in unlimited fashion, and bring lawsuits against our own troops for their behavior? The answer is no.

But Senator LEVIN was right. The military commission, part of it is written in a way without a direct appeal to Federal courts. There is historical precedent for doing it in-house, but there is a Supreme Court review precedent. So I am willing to take that part of the amendment that was not really the focus of the lawsuit abuse and come up with a compromise the country should be proud of.

Now, as to Senator BINGAMAN's attempt to strike my language, I will vote against Senator BINGAMAN's amendment, and I will urge all those who voted for me last time to stand with me. Senator BINGAMAN is trying to create a right to the DC Circuit Court of Appeals for all enemy combatants to bring habeas petitions similar to an American citizen, not what we have done in our amendment but a true habeas petition under section 2241.

The question is, Does the Congress want al-Qaida members to have habeas rights similar to American citizens? I say no. Senator BINGAMAN allows that right to still exist. He addressed some of the concerns I raised. He says the

habeas petition cannot consider claims based on living conditions. Because I have described how outrageous these claims are—about the exercise regime, the reading materials—most Americans would be highly offended to know that terrorists are suing us in our own courts about what they read.

He has two exceptions, however. They can still bring habeas lawsuits similar to an American citizen, ''whether such status determination was supported by sufficient evidence and reached in accordance with due process of law, provided that statements obtained through undue coercion, torture, or cruel or inhuman treatment may not be used as a basis for the determination; and (C) the lawfulness of the detention of such alien.''

The reason I am going to vote no on the Bingaman amendment is that these exceptions—the lawfulness of the detention of such alien—would allow a court, if they chose, to look at every condition of the enemy prisoner's life and do, again, what we are trying to prevent, that you could go into Federal court and start asking for a Federal judge to intervene in your interrogation before it even starts. My belief is the military is the best group to run the war, not Federal judges.

So I am going to oppose Senator BINGAMAN's amendment because it preserves habeas rights for noncitizen, foreign terrorists to come into Federal court at the District Court of Appeals, DC Court of Appeals, to put a wide variety of issues on the table. I do not think that is good for us. I do not think it is good for the war.

Now, I will vote with Senator LEVIN on our comprehensive package when it comes to how we are going to conduct the war on terror.

I will end with this thought. For the first time I know of, since September 11, 2001, we have sat down as a Congress and an administration to start thinking this thing through. We have come up with, I believe, a darn good package.

I say to Senator LEVIN, I have enjoyed working with him on this. I have been a military lawyer for over 20 years. There are a lot of things that go on in the Senate I do not know as well as I should. But I feel very comfortable that the war on terror is truly a war, that 9/11 was an act of war, it was not a crime, and if we will apply the law of armed conflict, we can be proud as a nation.

I say to the Senator, your amendment and my amendment together have gotten us back to where we should have been years ago, applying the law of armed conflict to these terror suspects in a way that goes beyond the Geneva Conventions because we are a nation that wants to do it right and then some. But we are also preserving our own ability to defend ourselves.

So to the world, if you are wondering what is going on in America now, if anybody goes to Guantanamo Bay, the Congress will be told about what goes on, and we will have a say about what goes on. If anybody at Guantanamo Bay is determined to be an enemy combatant, not only will Congress be involved in how they are kept and how long they are kept, our Federal courts will review the actions of our military to see if they comply with the Constitution of our Nation. And that is a huge change.

I say to the Senator, I congratulate you for working with me—working together—to come up with a review process, where the world can know for sure that what we are doing meets our own constitutional standards. Enemy combatants are going to get a chance to go to Federal court. The Federal court is going to look at the big picture and see whether what we have done is constitutional, and when it comes to that individual's case, to look at whether the procedures and standards that were involved were properly applied. The world should respect us for that. I am proud to have been part of that process.

To those who go to court and have their liberty interests dealt with, those who are going to be tried for law of armed conflict violations, we can tell the world that those people who will be tried at Guantanamo Bay will not be tried in secret. They will be tried in public to the extent that we can.

There is an op-ed piece today in the Washington Post by a defense counsel—and God bless him; I have been a defense counsel, and I want every right I can get as a defense counsel—saying that the trials at Guantanamo Bay are a lot different than the ones at Nuremberg. He is right in this regard. Nuremberg was trying people after the war was over. We will be trying people at Guantanamo Bay while the war is going on.

What we want to do is make sure the public knows as much as possible about the process, that the defendants understand the evidence against them, that they have the right to challenge the evidence, call witnesses, and testify. And they are presumed innocent. It is a very good infrastructure. But there may be some evidence down there about a particular defendant that has to be classified because to divulge that evidence would tip our enemy off as to what we are doing and how we are doing it.

We are still at war. It is important we understand we are still at war. But we can tell the world that for every person who goes through a military commission trial, we will be as open as we possibly can be without compromising our own security.

When that verdict is rendered, the Federal courts of the United States of America will look at the military action to see if it comports with the Constitution of our Nation, the preeminent legal document in the world, and will also review the individual's case. I am proud of that. It is going further than we probably absolutely have to, but it is doing the American thing. It is putting American values on display.

Ladies and gentlemen of the Senate, tomorrow is a historic day in the war on terror. You have a chance to put some legal infrastructure in place that will be a model for the world, that will help us win this war on our terms. I am proud to have been part of it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I want to commend the Senator from South Carolina and my colleague from Michigan whom I have worked with these many years.

If the Senator from South Carolina will retake his seat for a minute while the chairman speaks, I wish to say I thank my distinguished colleague because I look upon the work by Members of the Senate toward a resolution of these very difficult issues regarding prisoners taken in this series of conflicts, seeing what we have witnessed in terrorism, where there are no clear precedents, in many ways, in history for this nonstate-sponsored aggression.

As we witnessed in the tragedy in Jordan, it is not restricted to Iraq and Afghanistan. As General Abizaid has briefed the Senate and, indeed, briefed the American public on television, this is a worldwide movement that goes all the way from Spain to Indonesia. And you do not know where they will hit next or whom they will hit or by what means they will hit.

But I do believe as to the work initiated by our distinguished colleague from Arizona, Mr. MCCAIN, which you and I worked with him on, this matter, which you and Senator LEVIN have worked on, and to a limited extent—I am supporting you—I have had a voice, this is—and I say this with great respect to the President and the administration—a coequal branch of Government, the Senate. The Congress has a very clear mandate in the Constitution that we shall take care of the men and women of the Armed Forces. And this is part of that.

So I say to my good friends who have worked on this, well done. You are profiles in courage.

AMENDMENTS NOS. 2518 AND 2519

Now, Mr. President, as announced earlier, we will continue the remarks regarding the two amendments, one by my distinguished colleague from Michigan with his distinguished leader, the Senator from Nevada, and one by myself together with Senator FRIST.

Now, I wish to make an opening comment, and then I would like to yield the floor for such time as my distinguished colleague may speak, and then I will make some closing comments.

But it is important in our bill, and particularly on the last day, to address the situation in Iraq. But, indeed, it is broader than Iraq. It is, as I said a moment ago, the militant Jihadists attacking from Spain to Indonesia, wherever they want to bring freedom and current government to a standstill.

So we could have devised on this an entire amendment out of whole cloth,

but it seemed to me—and I am going to take responsibility—it seemed to me that we could show the maximum bipartisanship if we took the amendment, as drawn by my distinguished colleague from Michigan, Senator REID, and others, and made a minimal number of changes.

That is exactly the posture of these proper amendments. That, to me, indicates how much we really agree upon, page after page, paragraph after paragraph. It is carefully drawn so, first, the Senate expresses the sense of the Senate, not binding on the executive branch, it is the sense of the Senate. Then the second portion is a reporting requirement. But those reporting requirements are looking forward. We are not going back to debate history. History will debate that fully. We are going forward because the next 120 days, with Iraq in particular in mind, with the election in December, the formation of a new government, this next 120 days we must maintain stability, a clarity of understanding among the American people and the Iraqi people, and we cannot adopt any language, be it sense of the Senate or reporting language, that in any way raises speculation. Everything we say about the implementation of our Armed Forces should be with complete clarity.

The amendment by my good friend from Michigan left only the option, in the reporting to the President, of putting out unclassified information. That, to the maximum, the executive branch will do. But there are certain aspects—and every Member should be cognizant of this—of this very complicated war on terrorism that have to be given to the Congress in a classified version.

So that is the sum and substance of our amendment. Take away any indication of timetable, give the President the option to do unclassified and classified and have a forward-looking approach as we go into these next 120 critical days. This document can be referred to, hopefully, as a bipartisan instrument.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I thank my dear friend from Virginia for his positive comments. As always, he seeks to build bridges and to overcome differences and to reach across the aisle. It is typical of him, and it has been that way since the first day I met him many years ago.

The Levin-Reid amendment—there are two amendments pending—is an effort to, indeed, try to improve the situation in Iraq, to try to change the course for the better. There is no date for withdrawal in our amendment. It is not saying that we will withdraw troops at any particular specific date. We have done that because we think it would be a mistake to set a specific date, at least most of us do. On the other hand, we believe it is essential that we change course in a number of directions in order to improve the chances of Iraq becoming a success.

America is going to be less secure if Iraq is a failed state. Everybody agrees on that. The question is, How can we improve the chances of Iraq not becoming a failed state? What could we do here, carrying out our responsibility, what contribution can we make here to success in Iraq? Things are not working very well in Iraq in many ways. I know there are people who will point to progress in Iraq and, obviously, there are things to which one could point. But on the other hand, there are things that are not working well, and this amendment intends to address those in a constructive and positive way.

Staying the course is not a strategy; that is a slogan. How do we improve the chances for success? How do we modify our course so that we can achieve or help the Iraqis achieve—more accurately—a nation? And how can we also look forward to the day when our troops come out sooner rather than later?

This amendment looks at the year 2006 as a transition year, with Iraqi forces taking over security functions to a far greater extent. For that to happen, this amendment points out that a number of things need to happen. First, we have to advise the Iraqis that we are not there for an indefinite period of time, that they must take the steps necessary to achieve a broad-based political settlement which is so essential to defeating the insurgency. Our military advisers are unanimous on this point. There is no purely military solution unless the Iraqis come together politically. Unless they unify politically, they will not be able to defeat the insurgents. It is a point which must be made to the Iraqis. They cannot simply continue to squabble over the content of a constitution. They have to come together or else they are not going to succeed, and we are not going to succeed in helping them to achieve the security they want.

We need to advise the Iraqis we are not there indefinitely. They have to take the steps necessary to achieve a broad-based political settlement which is critically important to defeating the insurgency. We need a plan for success. We don't have a plan for success. I will speak more about that in a moment.

I want to go through the amendment. I want to point out where there is apparently agreement and where there is disagreement and what the significance is of both. The sense of the Senate starts by saying something that I think every Member of this body would agree with:

. . . members of the United States Armed Forces who are serving or have served in Iraq and their families deserve the utmost respect and the heartfelt gratitude of the American people for their unwavering devotion to duty, service to the Nation, and selfless sacrifice under the most difficult circumstances.

We start with that. Our troops and their families deserve the very best in equipment, training, and support, but also in our thinking. That doesn't mean there is going to be unanimity around. People who disagree on what the next step should be should not be pilloried in any way or criticized as being less American than those who support the administration's policy lock, stock, and barrel. There is a place for constructive criticism, for different points of view in a democracy. That is what our troops have always fought for. That is what men and women have died for, so that we would have an opportunity to have the kind of debate on policy which is going on now.

First, our heartfelt gratitude to our troops. Second, the sense of the Senate recognizes that the Iraqi people have made enormous sacrifices and that the overwhelming majority of Iraqis want to live in peace and security. There is no disagreement on that. The alternative amendment that we will be voting on does not differ with that.

The next paragraph there is no difference on either. Both amendments have the same language. There is no change in our version from the Frist-Warner version. That is:

. . . calendar 2006 should be a period of significant transition to full Iraqi sovereignty, with Iraqi security forces taking the lead for the security of a free and sovereign Iraq, thereby creating the conditions for the phased redeployment of United States forces from Iraq.

That is in paragraph 3 of the sense of the Senate. There is no change in that language to the Frist-Warner language. That is paragraph (b)(3). Creating the conditions for the phased redeployment of U.S. forces from Iraq surely ought to be a goal.

(4) United States military forces should not stay in Iraq indefinitely and the Iraqi people should be so advised.

That is an important statement to the Iraqi people, and it is an important statement to our people. We should not be staying in Iraq indefinitely. That is the wrong message to send for a number of reasons to the Iraqi people.

What the Warner version does is, it strikes the word ''indefinitely'' and says:

United States military forces should not stay in Iraq any longer than required and the people of Iraq should be so advised.

The problem with that is, they could be required forever. That is open-ended. It is unlimited. It is the wrong message. That is a difference, and it is the first difference.

The next paragraph, there is no difference on:

. . . the Administration should tell the leaders of all groups and political parties in Iraq that they need to make the compromises necessary to achieve the broad-based political settlement that is essential for defeating the insurgency . . . within the schedule that they have set for themselves.

By the way, the schedule that they have set for themselves is to appoint a commission when the new assembly takes office in January, to appoint a constitutional commission to review the constitution and make recommendations for changes within 4

months. That is their schedule. They ought to keep that.

Next—there is no disagreement on this language—

. . . the Administration needs to explain to Congress and the American people its strategy for successful completion of the mission in Iraq.

No difference on that language.

Now to paragraph C on the reports.

Mr. WARNER. Mr. President, to help those following, you have now concluded that section entitled ''Sense of the Senate.'' Both amendments have it phrased such, not binding on the administration.

Mr. LEVIN. That is correct.

Mr. WARNER. As you carefully pointed out, but I would like to repeat, the entire section that you have referred to we have accepted—I accepted and recommended to my colleague—except for that one change of striking ''indefinitely'' and using ''any longer than required.'' And when I regain the floor, I will explain why I felt that modest one-word change was important. Other than that, we have accepted in its entirety that section entitled ''Sense of the Senate'' accept for a one-word change.

Mr. LEVIN. The Senator is correct.

On the report section, there is a change from 30 days to 90 days, which I will not spend time on. I think it is a fairly technical change, that there is not a particular difference or problem.

After that first report, whether it is 30 days or 90 days—30 days in our version, 90 days in Senator WARNER's version—every 3 months thereafter, until all U.S. combat brigades have been redeployed from Iraq, the President shall submit to Congress an unclassified report on U.S. policy and military operations in Iraq. In our version we say:

Each report shall include the following:

What the Warner version adds is ''to the extent practicable, unclassified information.'' And by the way, it is clear that there is classified information that cannot be in a report, and we don't suggest to the contrary. We just want an unclassified report to the extent you can have an unclassified report on each of the following items:

. . . The current military mission and the diplomatic, political, economic, and military measures, if any, that are being or have been undertaken to successfully complete that mission.

So far, no difference on that one.

Efforts to convince Iraq's main communities to make the compromises necessary for a broad-based and sustainable political settlement.

That is what I referred to before. It is so critically important that we must convince the communities in Iraq that they must make the compromises necessary for a broad-based, politically acceptable settlement. No difference on that language; no proposed change in that.

Next, in our amendment, we need to engage

the international community and the region in the effort to stabilize Iraq and to forge a broad-based and sustainable political settlement.

No difference on that.

We need a report to us every 30 days on what is being done to strengthen the capacity of Iraq's Government ministries; to accelerate the delivery of basic services; to secure the delivery of pledged economic assistance from the international community, and additional pledges of assistance; to train Iraqi security forces and transfer security responsibilities to those forces and the Government of Iraq.

No difference on that in terms of what must be in this report.

Next, we need in this report to know

whether the Iraqis have made the compromises necessary to achieve the broad-based and sustainable political settlement—

We need to keep the pressure on the Iraqis. We need the administration to tell us the Iraqis have made the compromises necessary. Without that kind of keeping the Iraqis' feet to the fire, it is less likely the Iraqis are going to make the kind of broad-based compromises that are necessary—the compromises that are necessary to achieve that broad-based political settlement that is essential, in our words, to defeat the insurgency in Iraq.

And now we get down to the heart of the matter where there seems to be a difference, and I want to spend another couple minutes on this. This report, according to our amendment—not disagreed to with the Warner amendment—must include specific conditions that were included in an April 2005 campaign action plan and any subsequent update to that campaign plan that must be met in order to provide for the transition of security responsibility to the Iraqi security forces.

There seems to be no objection to that. There is no change in that. So we want that document, that report from the administration to set forth any specific conditions that were in the April 2005 campaign action plan and any updates to that campaign plan that need to be met in order to provide for transition of security responsibility.

There is an acknowledgement by no change in our language that there is a report containing conditions, that there is a need for updates to that campaign plan that need to be met in order to provide for the transition of security responsibility to the Iraqi forces.

Now we then have language which on this whole next page is not objected to, which is accepted, which is that to the extent these conditions are not covered, as I have just outlined, the following needs to be addressed. We lay out here one, two, three, four conditions: number of battalions of Iraqi Armed Forces that have to operate independently or take the lead in counterinsurgency operations; number of Iraqi police units that have to operate independently or take the lead in maintaining law and order in fighting the insurgency, the number of regular police that must be trained and equipped to maintain law and order; the ability of Iraq's ministries and provincial and local governments to independently sustain, direct, and coordinate Iraq's security forces.

Now, so far there is apparently no problem. We have laid out all of those conditions that need to be set forth in the report that has to come every 30 days after that first report.

Then in subsection (6) we have a requirement in the report that is also not objected to, which is a schedule for meeting such conditions. There is no objection to that in the Warner amendment. There is no language change in his version.

So we require a schedule for meeting those conditions which I have outlined and an assessment of the extent to which such conditions have been met, information regarding variables that could alter that schedule, and the reasons for any subsequent changes to that schedule.

So far, so good. No change in the language.

Mr. WARNER. Mr. President, if the Senator will yield, for those following, we covered first the sense of the Senate. The Senator has now covered very carefully all the other provisions. It seems to me that there has been no disagreement whatsoever between the two sides. You pointed out, yes, I asked for 90 days; you have 30. But I don't think that was particularly troublesome. And I pointed out that one little change in language, ''to the extent practicable,'' so that the President could include classified. So in essence there is absolutely no difference between the two amendments up to the point you are now addressing, which is the last paragraph; is that correct?

Mr. LEVIN. Not quite, because there was that one change which the Senator from Virginia made in the sense-of-the-Senate language.

Mr. WARNER. No, I pointed that out.

Mr. LEVIN. I know you said there has been no change other than this. I said there was a prior one which we agreed was a change.

Mr. WARNER. I was referring to now the statutory report language. There is no difference until you get to the last paragraph.

Mr. LEVIN. I would agree. Now to the last paragraph, which for reasons beyond me has been stricken.

We referred to the campaign plan—without objection. There was a campaign plan we referred to which said, what are the conditions in that plan that must be met in order to provide for the transition of security responsibilities to Iraqi security forces? There is the campaign plan. There are the conditions which have been laid out, which of those conditions must be met in order to achieve the goal which we have agreed on in this document—transition of security responsibility to security forces.

Then we have agreed that the report has to contain a schedule for meeting those conditions. What are the conditions? What is the schedule for meeting

them? Three times we refer to that schedule in that same paragraph. No objection so far.

But now we say that campaign plan should also contain estimated dates for the phased redeployment of the United States Armed Forces from Iraq as each condition is met. The conditions are already laid out. What is the campaign plan with estimated dates for the phased redeployment as those conditions are met?

Then we explicitly acknowledge that, with the understanding that unexpected contingencies may arise.

We have already made reference to the phased redeployment. That is the first time we have made a reference to phased redeployment.

In the sense of the Senate, paragraph (b)(3), we have said:

> Calendar year 2006 should be a period of significant transition to full Iraqi sovereignty, with Iraqi security forces taking the lead for the security of a free and sovereign Iraq, thereby creating the conditions for the phased redeployment of United States forces from Iraq.

So in subparagraph (7), the last paragraph, which makes reference to the campaign plan—we have already described what that is, with no objection to it—are the estimated dates for the phased redeployment of the United States Armed Forces from Iraq—we have already made reference to the goal of phased redeployment of United States Armed Forces—as each condition is met. We already have agreement on everything up to now, talking about all those conditions and the need that they be met, with the understanding that unexpected contingencies may arise, which I can't imagine anybody would object to because there are unexpected contingencies that always arise. We have acknowledged this.

But why it is there is objection to acknowledging what is obvious, that a campaign plan needs to have dates, estimated dates for the phased redeployment we have already agreed is desirable, as conditions allow and as each condition is met? Why that would be objectionable is frankly a mystery to me unless there is a reluctance to do what we do in an earlier paragraph, which is to say, folks, we can't stay there forever, we have a plan for success, where there is a takeover of the major security operations by the Iraqis so we can in a phased way redeploy our forces. Eliminating that part of the plan, it seems to me, is eliminating what is essential, what clearly follows from everything that precedes it, which has been agreed to, and I think it would send exactly the wrong message, to agree to all of the pieces that come up to that conclusion, including the conditions which need to be met, the desirability of phased redeployment, the fact that there is a campaign plan, the fact that that campaign plan has conditions in it that need to be met in order to provide for the transition of security responsibility.

It is all there. It is all there in the pieces leading right up to paragraph (7). Suddenly in the Warner version, paragraph (7) is stricken.

Again, I close with this emphasis. We have not said in this document that there should be a date for withdrawal. We said there should be a plan. What are the conditions for phased redeployment? What would it take for this to happen? What number of battalions need to be brought up to capability on the part of the Iraqis in order for there to be a number of our forces that are reduced and under what conditions? What are those circumstances and conditions which will allow us to reduce our forces?

For the administration to resist stating to the American people what are the conditions that need to exist for us to reduce our forces in Iraq it seems to me is wrong. It means there is no plan, there is no strategy that they are willing to lay out for the American people and for the Iraqi people as well so that there is no misunderstanding as to where this responsibility must fall ultimately, which is on the people of Iraq to come together politically and to take over their own military security.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, again I commend my colleague. I think I have fairly clearly stated, and I believe there has been concurrence, the document prepared by the Senator and others is virtually accepted in our amendment. The changes that I put out, the one simple change in the sense of the Senate, you understood that. Then we get to the conditions, which is changing 120 days instead of 30. So I say to my colleague—and I think the Senator has been very fair and objective about it—the amendments are parallel in every respect except the last paragraph.

I say to my good friend, I say to all Senators, the next 120 days are critical. If this is to become law, the President would have to start every 90 days addressing the estimated dates for the phased redeployment of United States Armed Forces from Iraq. No mention about the other coalition forces.

I say that few words can be interpreted by all as being the timetable, and we do not in this 120 days, in my judgment, want to have any hint whatsoever of a timetable. It is so critical, with all the progress thus far by the Iraqi people—elections and a series of transitional governments, then acceptance of the constitution by referendum, then the election of a new legislative body, and then they have to stand up and begin to strengthen the ministries and take hold in such a way that it is clear to the Iraqi people and the world that that government is in control. To put any language such as this in there, to suggest any timetable by which we begin to withdraw forces, would undermine entirely and make highly risky the next 120 days.

I yield the floor.

Mr. LEVIN. Will the Senator yield for a correction? I inadvertently said the report would be every 30 days after the first report. I misspoke. It would be every 90 days, as the Senator from Virginia correctly has stated. It would be every 90 days after the first report.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, this is one of those quiet moments in the Senate with very few people in the Chamber when, in my opinion, something very important is happening. It is happening in good measure because of the two good men, my colleagues from Virginia and Michigan, who lead the Armed Services Committee, of which I am privileged to be a member. They are two gentlemen, two patriots, two people who have known each other for a long time, who work closely together, respect each other, even seem to like each other and, most important of all, trust each other.

Those qualities of personal trust and personal relationship have been too absent from our Nation's consideration of the ongoing war in Iraq among our political leadership. We have, I am convinced, suffered from it.

It is no surprise to my colleagues that I strongly supported the war in Iraq. I was privileged to be the Democratic cosponsor, with the Senator from Virginia, of the authorizing resolution which received overwhelming bipartisan support.

As I look back on it and as I follow the debates about prewar intelligence, I have no regrets about having sponsored and supported that resolution because of all the other reasons we had in our national security interest to remove Saddam Hussein from power, a brutal, murdering dictator, an aggressive invader of his neighbors, a supporter of terrorism, a hater of the United States of America. He was for us a ticking timebomb that if we did not remove him I am convinced would have blown up, metaphorically speaking, in America's face. I am grateful to the American military for the extraordinary bravery and brilliance of their campaign to remove Saddam Hussein.

I know we are safer as a nation, and to say the obvious that the Iraqi people are freer as a people, and the Middle East has a chance for a new day and stability with Saddam Hussein gone. We will come to another day to debate the past of prewar intelligence. But let me say briefly the questions raised in our time are important. The international intelligence community believed Saddam Hussein had weapons of mass destruction. Probably most significant, and I guess historically puzzling, is that Saddam Hussein acted in a way to send a message that he had a program of weapons of mass destruction. He would not, in response to one of the 17 U.N. Security Council resolutions that he violated, declare he had eliminated the inventory of weapons of mass destruction that he reported to

the U.N. after the end of the gulf war in 1991.

I do not want to go off on that issue. I want to say that the debate about the war has become much too partisan in our time. And something is happening here tonight that I believe, I hope, I pray we will look back and say was a turning point and opened the road to Republican and Democratic cooperation, White House and congressional cooperation, to complete the mission. As Senator LEVIN said, no matter what anyone thinks about why we got into the war and whether we should have been in there, it is hard to find anybody around the Senate—I have not heard anybody—who does not want us to successfully complete our mission there. I feel that deeply. If we withdraw prematurely from Iraq, there will be civil war, and there is a great probability that others in the neighborhood will come in. The Iranians will be tempted to come in on the side of the Shia Muslims in the south. The Turks will be tempted to come in against the Kurds in the north. The other Sunni nations, such as the Saudis and the Jordanians, will be sorely tempted, if not to come in at least to aggressively support the Sunni Muslim population. There will be instability in the Middle East, and the hope of creating a different model for a better life in the Middle East in this historic center of the Arab world, Iraq, will be gone.

If we successfully complete our mission, we will have left a country that is self-governing with an open economy, with an opportunity for the people of Iraq to do what they clearly want to do, which is to live a better life, to get a job, to have their kids get a decent education, to live a better life.

There seems to be broad consensus on that, and yet the partisanship that characterizes our time here gets in the way of realizing those broadly expressed and shared goals.

Politics must end at the water's edge. That is what Senator Arthur Vandenberg of Michigan said, articulating the important ideal that we seem to have lost too often in our time.

I found a fuller statement of Senator Vandenberg's position, the ideal. I found it to be in some ways more complicated and in other ways much more compelling. I want to read from it. Senator Vandenberg said:

> To me ''bipartisan foreign policy'' means a mutual effort, under our indispensable two-Party system, to unite our official voice at the water's edge so that America speaks with maximum authority against those who would divide and conquer us and the free world.

If that doesn't speak to us today—the threat of Islamist terrorism, the desire they have to divide us and, in that sense, to conquer us in the free world. Senator Vandenberg continued in his definition of what he meant by bipartisanship in foreign policy:

> It does not involve the remotest surrender of free debate in determining our position. On the contrary, frank cooperation and free debate are indispensable to ultimate unity—

Of which I speak.

> In a word, it simply seeks national security ahead of partisan advantage.

I felt again in recent days and recent months how far we have strayed down the partisan path from Vandenberg's ideals. The most recent disconcerting evidence of this was the lead story from the Washington Post—it was in papers all over the country—last Saturday, November 12. I read from that story:

> President Bush and leading congressional Democrats lobbed angry charges at each other Friday in an increasingly personal battle over the origins of the Iraq war. Although the two sides have long skirmished over the war, the sharp tenor Friday resembled an election year campaign more than a policy disagreement.

That from Saturday's Washington Post. Campaign rhetoric over policy debate, and what about? About how we got into the war 2½ years ago, not about how we together can successfully complete our mission in Iraq.

The questions raised about prewar intelligence are not irrelevant, they are not unimportant, but they are nowhere near as important and relevant as how we successfully complete our mission in Iraq and protect the 150,000 men and women in uniform who are fighting for us there.

I go back to Vandenberg's phrase; the question is how Democrats and Republicans can ''unite our . . . voice at the water's edge . . . against those who would divide and conquer us and the free world'' in Iraq, I add, and beyond.

The danger is that by spending so much attention on the past here, we contribute to a drop in public support among the American people for the war, and that is consequential. Terrorists know they cannot defeat us in Iraq, but they also know they can defeat us in America by breaking the will and steadfast support of the American people for this cause.

There is a wonderful phrase from the Bible that I have quoted before:

> If the sound of the trumpet be uncertain, who will follow into battle?

In our time, I am afraid that the trumpet has been replaced by public opinion polls, and if the public opinion polls are uncertain, if support for the war seems to be dropping, who will follow into battle and when will our brave and brilliant men and women in uniform in Iraq begin to wonder whether they have the support of the American people? When will that begin to affect their morale?

I worry the partisanship of our time has begun to get in the way of the successful completion of our mission in Iraq. I urge my colleagues at every moment, when we do anything regarding this war, that we consider the ideal and we are confident within ourselves. Not that we are stifling free debate. Free debate, as Vandenberg said, is the necessary precondition to the unity we need to maximize our authority against those who would divide and conquer us. But the point is to make sure we feel in ourselves that the aim of our actions and our words is national security, not partisan advantage.

Now we come to today. After reading that paper on Saturday, I took the original draft amendment submitted by Senator WARNER and Senator FRIST—it actually wasn't offered, but it was around—and Senator LEVIN and Senator REID. I took the amendments back to Connecticut, and last night I looked them over. Neither one expressed fully what I hoped it would, but as I stepped back, I said that these two amendments—one Republican, one Democrat, unfortunate in a way breaking by parties—these amendments are not that far apart.

I like the way in which the Warner amendment recited again the findings that led us to war against Saddam Hussein and, quite explicitly, cited the progress that has been made. I do think Senator LEVIN's amendment doesn't quite do this part enough, about the progress, particularly among the political leaders of Iraq. They have done something remarkable in a country that lived for 30 years under a dictator who suppressed all political activity, encouraged the increasing division and bitterness among the Shia's, the Sunnis, the Kurds. These people, with our help and encouragement, have begun to negotiate like real political leaders in a democracy. It is not always pretty. What we do here is not always most attractive. That is democracy. Most important of all, 8 million Iraqis came out in the face of terrorist threats in January to vote on that interim legislation. Almost 10 million came out to vote on a constitution, which is a pretty good document, a historically good document in the context of the Arab world.

What happened when the Sunnis felt they were not getting enough of what they wanted in a referendum? They didn't go to the street, most of them, with arms to start a civil war; they registered to vote. That is a miraculous achievement and a change in attitude and action. They came out to vote in great numbers, and they will come out, I predict, again in December in the elections and elect enough Sunnis to have an effect on the Constitution next year.

So I wish that some of that had been stated in Senator LEVIN's amendment.

Mr. LEVIN. Would the Senator yield on that point?

Mr. LIEBERMAN. I would.

Mr. LEVIN. My amendment is exactly the same as Senator WARNER's amendment in that regard. Senator WARNER has adopted my amendment with two minor changes. He has not made any change in terms of the progress that has been made or the reference to the great work of our troops. I thought I heard the Senator from Connecticut—and I have no dearer friend in the Senate—suggest that he had wished that my amendment would be more fulsome relative to progress. I

just wanted to assure the Senator that there is no change in that language in the version which was subsequently filed by the Senator from Virginia.

Mr. LIEBERMAN. I thank my friend from Michigan. What I said, and I know the Senator from Michigan was involved in a conversation, I was actually going back and quoting the draft of the Warner amendment that was circulating at the end of last week which had statements about why we went to war and marked the progress that had been made politically and economically since then. But the Warner amendment did not raise questions about what our plan is now and how to successfully complete the mission. It did not raise the questions Senator LEVIN's amendment rightly raises for progress reports from the administration about how we are doing and in that sense did not create an opportunity for a dialogue that can get us beyond the partisan gridlock in our discussions about the war. I wrote a statement last night expressing my frustration on that.

I had other concerns about Senator LEVIN's amendment, including particularly the last paragraph which I believe creates a timetable for withdrawal, and I think that is a mistake, particularly in the next 3 to 6 months as the Iraqis stand up a new government. It may not be the intention of the sponsors, but it does send a message that I fear will discourage our troops because it seems to be heading for the door. It will encourage the terrorists, and it will confuse the Iraqi people and affect their judgments as they go forward.

Incidentally, I do thank the Senator from Michigan because I know he and others in the Democratic caucus worked very hard to make this amendment an inclusive amendment. I had the opportunity to make a few suggestions, some of which were accepted, some of which were not. Then I arrive back in Washington today and I find that the Senator from Virginia has decided not to put in that amendment, has seen some real strengths in the amendment of the Senator from Michigan, has cut out a few points as enumerated, that I personally—and Senator WARNER and I had no conversation about this—thought weakened or at least I found objectionable. I think it is better to strike the word ''indefinitely,'' that our troops will not stay there indefinitely. Of course they will not stay there indefinitely but to make the telling point that we will stay there as long as conditions require and no longer. I fear that if a timetable is put in at the end, ask for a series of dates of phased deployment, even though they are based on those conditions that were cited, it looks like a withdrawal plan and does not send a sound of strength, the sound of a certain trumpet.

The point that I wish to make is that Senator WARNER has now taken most of Senator LEVIN's amendment. The Republican leader, if I could talk in partisan terms, has said to the Democratic leader: We accept most of his amendment with these few changes. I think this is a turning point. It is a significant development in terms of the Senate's consideration of the war in Iraq and hopefully in terms of the administration's consideration as well.

The distrust, the lack of dialogue between the executive branch and Democrats in Congress is so deep and complicated now that I cannot even begin to describe how we got to this point. I know it is a bad place to be, particularly when we are at war.

I remember the words of the Secretary of War during the Second World War, Henry L. Stimson—this was actually after the war. He said: Sometimes the best way to make a person—and he really meant a nation—trustworthy is to trust them. That has been lacking in the relations between the executive branch and the Democrats in Congress.

I believe Senator WARNER, the Republican chairman of the Armed Services Committee, in accepting almost all of the Democratic amendment, has in some sense expanded the trust he feels for the ranking Democrat on the committee and created a process where the administration does have to report to us every 90 days, and if the administration—let me put it another way, respectfully. I hope the White House, the Pentagon, sees this also as a moment of opportunity to engage with the Congress so that we will achieve, after free debate—and that is exactly what we have heard on the floor tonight—the result Senator Vandenberg spoke to, which is that we will, under our indispensable two-party system, unite our official voice at the water's edge so that America speaks with maximum authority against those who would divide and conquer us in the free world.

It is a different kind of enemy, but the extremist Islamist terrorists who face us, as Senator WARNER said, from Spain to Indonesia, it is their plan for conquer. They struck us on 9/11. They are preparing to strike us again. If we cannot pull together across party lines to defeat this enemy to our security and our way of life, shame on us, particularly if we are stopped from doing so by momentary partisan political ambitions.

So I am going to vote for the Warner amendment—I believe it is a significant step forward—for the reasons I have said, because of the timetable at the end particularly. I am going to respectfully vote against the Levin amendment. I hope the Levin amendment comes up first, and if it is not passed, I hope there is an overwhelming bipartisan vote for the Warner amendment.

I cannot resist one final quote from the great Vandenberg—succeeded by another great Senator, I might say, from Michigan, Mr. LEVIN—and this is that famous speech on January 10, 1945, when he abandoned his long-time isolationism and embraced an internationalist foreign policy, and, boy, did his words speak directly to us in our circumstances in Iraq and around the world today. I hope they give us pause. I hope in some sense—frankly, they give us a bit of discomfort about some of the things that have happened in the political consideration of the war.

Here is what Vandenberg said:

> There are critical moments in the life of every nation, which call for the straightest, the plainest and most courageous thinking of which we are capable. We confront such a moment now. . . .

And we do today, as well.

Vandenberg continued:

> . . . It is not only desperately important to America, it is important to the world. It is important not only to this generation, which lives in blood . . .

As ours sadly does, as the people who were in the Trade Towers and the Pentagon and Jordan over the weekend and so many other places around the world.

> . . . It is important to future generations if they shall live in peace. No man in his right senses will be dogmatic in such an hour.

I digress to thank the Senator from Virginia for coming across the aisle a long way. I thank the Senator from Michigan for the work he did to make his amendment as inclusive and broad as it was so that it enabled the Senator from Virginia to do that.

Vandenberg ended:

> Each of us can only speak according to his little lights—and pray for a composite wisdom that shall lead us to a high, safe ground.

That is exactly what we need with regard to Iraq today. We have to do what is best for our country. We have to do what is best for the 150,000 Americans who are there. We have to do what best enables us to do what we say we all want to do, which is to successfully complete America's mission in Iraq. The sooner we do that, what is best for our country and our great military, the sooner we will succeed in Iraq, and the sooner we will be able to bring our brave soldiers home.

This compromise amendment offered by Senator WARNER, building on the excellent work Senator LEVIN has done, is an enormous step forward toward that higher ground. I thank them both for the work they have done.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, there are rare moments in the life of the Senate that one shall never forget. I thank the Senator not just because he has indicated support for my amendment but for the Senator's very extraordinary observations about the times, the difficulty, and the need to have bipartisanship and to leave our politics at the water's edge. As I said earlier, I take responsibility for adopting this course rather than the earlier draft I had prepared.

I say to my colleagues on both sides of the aisle, it is an expression of how close we really are on the fundamental things. The sole point of difference is how each Senator shall read the last

paragraph. It is as simple as that. I read it as lending to the world an interpretation of what we have done and what we will do in the future as embracing some definitive timetable, and the President will have to every 90 days address those key words and in doing so could well complicate and jeopardize the next 120 days, which this Senator thinks is so critical.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, first let me thank my good friend from Connecticut, particularly for his repeated reference to a Senator from Michigan whom we all hold in such huge esteem—particularly Michigan, but it is not limited, obviously. We just put his portrait out in the reception room, one of the two Senators we have added in that reception room. I believe there are only seven Senators whose portraits are there. One of them is now Senator Vandenberg. I quote him often for many purposes, including the bipartisan foreign policy that he espoused.

As the Senator from Connecticut pointed out, he also urged us to give our very best thinking and not to worry about being mischaracterized or being challenged in terms of patriotism because all of us, I believe, agree that when we give our best assessment of the path forward, the success in Iraq, that we are all acting in the best of faith.

I know every colleague I either know of or do not know of is operating in the best of faith, total support for our troops, total support for their families, and how we can best succeed in Iraq. I believe we have to make some changes in our course. This amendment explicitly suggests some of those changes in course. It will hopefully make it more likely that we will succeed in Iraq.

One thing I know for sure, and that is that unless the Iraqis take hold, unless they put their political house in order, unless they do what this amendment says in both versions, that they make the political compromises and the tough political decisions that are necessary for them to be unified against the insurgency, unless they do that, there is no chance that they are going to succeed against this insurgency. They must come together politically. That is what this amendment says.

This amendment provides that they also must understand that we are not there for an unlimited period of time, because if they do believe that we are there for an unlimited period of time, they are less likely to make the political compromises which must be made for them to unite against the insurgency. That is the reason the message is so important. Are we there for an unlimited period of time, as long as you need us? Is that the right message? Or is the right message that we are not there for an unlimited period of time, we are not setting a date for departure, but we are putting you on notice, folks, you need to get your political house in order so that you can defeat, with our assistance, that insurgency. And without that kind of coming together, that military success is either unachievable or far more difficult.

That is the purpose of this amendment, and that is why the few words that were in this version, which the Senator from Virginia would change, are important words, to let the Iraqis know that the American military forces are not going to be there indefinitely, because, again, if they think we are there as long as they need us, which is the way the administration has phrased it, it is less likely that they are going to make the very difficult compromises that need to be made in order to put together a modified constitution around which all Iraqi factions can rally.

That is one of the purposes of this amendment. The other purpose is on the reports, which already, in this amendment which has been agreed to by my friend from Virginia, this amendment as written and as agreed to—there is no change to this—requires a schedule for meeting conditions. It requires a listing of variables that could alter a schedule. It requires that reasons be provided for any subsequent changes to that schedule.

What is one of the conditions? One of the conditions is that there be a campaign plan that must be met to provide for the transition of security responsibility to Iraqi security forces. So that is one of the stated conditions, that there be this campaign plan provided to the Congress, and that plan provide for the transition of security responsibility to Iraqi security forces.

Three times we make reference to a schedule and we make very clear the conditions which must be laid out as to which conditions need to be met when, including what are the number of the battalions in the Iraqi Armed Forces that can operate independently or take the lead in counterinsurgency operations—all that seems to be agreed to. We have a schedule. We have to lay out the conditions. One of the conditions is how many battalions of Iraqi Armed Forces need to be able to operate independently. We lay all of that out.

But then in the last paragraph, when we use the words ''estimated dates'' rather than ''schedule,'' for some reason the use of the words ''estimated dates'' creates a problem. Maybe it is not the words ''estimated dates,'' maybe it is the words ''phased redeployment,'' but I would again remind my colleagues that, in our sense of the Senate, we set forth a goal that, in order to succeed in Iraq, we have to have significant transition in the year 2006, with Iraqi security forces taking the lead, thereby creating the conditions for the phased redeployment of the United States forces. That is a goal stated and apparently agreed to by my good friend from Virginia.

There is much in common here. I think the Senator from Connecticut is right. There is clearly a sense we have to do some things here to make it more likely that we are going to succeed in Iraq. That has to be everybody's goal, regardless of what our positions were going in or how critical we are of the way this war is run. Our goal is to maximize the chances for success in Iraq.

But our amendment does have some differences. We should not paper over those differences. There are two differences, which the Senator from Virginia has pointed out and I have pointed out. I guess that is where it is going to rest when the Senate votes tomorrow.

Mr. WARNER. Mr. President, our magnificent service men and women, along with allies and partners, are supporting the Iraqis as they develop their own concepts of democracy. Jointly we are improving infrastructure, improving the internal security, and together confronting the extremists.

By any fair objective political measure, the people of Iraq are making progress. In 1 year, the Iraqis elected a transitional government, ratified a constitution, and are preparing to elect a permanent parliamentary government on December 15th.

During many hearings and briefings, the senior military commanders, particularly General Abizaid has stressed that the extremist militant jihadists are focusing on dominating a geographic area that extends from Spain to Indonesia. The tragic events in Jordan underscore the accuracy of that military analysis.

The al-Qaida group in Iraq claimed responsibility for the tragic attacks in Jordan against innocent Arab civilians. While portions of Iraq remain focal points for terrorist attacks, the threat extends far beyond.

This enemy seeks neither compromise nor coexistence with the United States or others who do not share their world vision. The United States, along with partners and allies, must continue their strong resolve and effectively address this threat. The civilized world has no choice.

Of equal importance to the military mission in Iraq is the development of political structures and reconstruction of the infrastructure. I, like many of you, have made a number of trips to Iraq: I have seen progress.

Now I would like to specifically address the pending amendments related to our policy to achieve our military, political, and reconstruction goals in Iraq. While there are similarities, the amendments differ on several major points.

Both amendments recognize the magnificent work being done by our Armed Forces; the unwavering support of their families at home; the importance of political developments to take place in Iraq next year; the necessity to put Iraqi Security Forces in the lead in securing Iraq; and the requirement to keep the American people well informed of all aspects of the military, political, and reconstruction efforts in Iraq.

Both amendments call for the President to submit a quarterly report on our progress in Iraq. While Congress already receives a number of reports and Members and committees in both bodies receive briefings from civilian and military leaders, this report from the President would become the most comprehensive report on the situation in Iraq.

These are the three important differences between the two amendments.

No. 1 the reporting timeline—section c. The Warner-Frist amendment calls for the first report 90 days after the enactment of the Act. Ninety days allows the President sufficient time to assemble this very wide-ranging report. A report of this scope will require close consultation with all departments and agencies of the Federal Government; American diplomats in Iraq and in the region; United States allied and partnered nations; and our military leaders here and in the theater of operations.

The Levin amendment would allow for just 30 days of coordination and consultation before submitting the initial report. I believe that is insufficient time to produce a report as comprehensive as this.

No. 2 is section c. The Levin-Reid amendment calls for a completely unclassified report. The Warner-Frist amendment directs that the report be unclassified to the extent possible. This is an important distinction. Some information on international negotiations and agreements, and plans for Iraq's domestic security will be an integral part of the development of Iraqi security forces, this may be too sensitive to be presented in an unclassified forum. The Warner-Frist amendment allows the President to produce a classified annex if the President and his advisors believe it is necessary.

No. 3 is a campaign plan with estimated dates for phased withdrawal—section c(7). The Levin-Reid amendment asks for a campaign plan with estimated dates for the phased withdrawal of U.S. forces to be published in the unclassified report. I believe that any program for the withdrawal of American combat forces must be conditions-based, and linked to specific, responsible benchmarks not just dates on a calendar, per se. While I agree that we must continue to make it clear to the Iraqis that a program for withdrawal is a common goal, any announcement of immediate withdrawal or even speculation of withdrawal before a secure and democratic Iraq is in place is simply not prudent.

I am concerned that the release of a timeline such as that in the last paragraph of the Levin-Reid amendment now that announces our withdrawal plans, even with estimated dates, could promote speculation and send an erroneous message to our troops, the Iraqi people, our coalition partners, and the terrorists.

I urge you to vote for Warner-Frist amendment and that we follow Levin and Reid, rather than an entire new amendment to show how much we do agree on and that this is an effort to seek partisanship.

We are down to two differences: the word ''indefinite,'' which to me precludes the chance—could be construed as we would not leave a very small unit there to facilitate the logistic transfer, the need to bring up to a level of acceptability the armaments the Iraqis have; and the continuation of some security work as well as training. But I will not belabor the point. I was very specific in the careful choice of words substituted for ''indefinite.''

The last paragraph—every Senator has to decide for himself or herself the clear meaning of the English language and whether that cannot be construed by many to invoke the thought of a timetable.

I say to my good friend, we have had a very good debate tonight. How fortunate we are that our distinguished colleague, a long-time member of the committee, the Senator from Connecticut, joined us.

I think we have done a good service to our colleagues who, in a very brief period tomorrow, will be required to focus on this and cast their votes accordingly.

Mr. LEVIN. Mr. President, I hope we have performed that service. I know we all tried in good faith to do it. I am perfectly content, as the Senator from Virginia is, that our colleagues read that last paragraph, read the paragraph before that making reference three times to schedules, read the entire resolution we have written, and then determine as to which is the better message to send to the Iraqis.

I am perfectly content to leave it rest there.

Mr. WARNER. Mr. President, I think the matter now is that the Senate should go off the bill and I will proceed to do morning business.

Mrs. DOLE. Mr. President, I thank Chairman WARNER and ranking Member LEVIN for their leadership in bringing the fiscal year 2006 Defense authorization bill, S. 1042, to the floor and shepherding it through to final passage after months of unfortunate delays.

Due to procedural limitations associated with the managers' amendment which included my amendments, it was impossible to have original cosponsors added. The following Senators are cosponsoring certain of my amendments:

Senators CHAFEE and DEWINE would like to cosponsor my amendment to provide for mental health counselors under TRICARE, S.A. 2456; Senators NELSON of Florida, TALENT, ROBERTS and HARKIN would like to cosponsor my amendment to require a report on predatory lending directed at members of the Armed Forces and their dependents, S.A. 2468.

MORNING BUSINESS

Mr. WARNER. I ask unanimous consent there be a period for morning business with Senators to speak for up to 10 minutes each.

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

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress I have come to the floor to highlight a separate hate crime that has occurred in our country.

On November, 7, 2005, in New York City, NY, Kyle Spidle was attacked near the Monster Bar where he worked. The attack began when two men began yelling from a vehicle at Mr. Spidle about the way he was walking down the street. When Mr. Spidle yelled back the pair of men got out of the car and begin to beat him. According to police, the pair hurled homophobic epithets at Mr. Spidle as they beat him

I believe that our Government's first duty is to defend its citizens, in all circumstances, from threats to them at home. The Local Law Enforcement Enhancement Act is a major step forward in achieving that goal. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

ADDITIONAL STATEMENTS

MONTANA'S BLUE RIBBON SCHOOLS

• Mr. BURNS. Mr. President, I rise today to honor Bryant Elementary School, Chief Joseph Elementary School, and Huntley Project Elementary School. Montana is proud and I am honored to recognize these three schools identified as blue ribbon schools under No Child Left Behind.

As the spouse of a schoolteacher, I understand the many difficulties our schools face. Each and every day, parents send their children off to school to be educated, cared for, and disciplined. These three Montana schools have received this important award, and were honored last week at the Department of Education. I thank the staff, teachers, and parents for their hard work to make such success possible. The Blue Ribbon Award is no small achievement—students from these schools are in the top 10 percent of students across the State. I am honored to acknowledge them for their work.

Principals Howard Corey, Rick Knisely, and Russell Van Hook all understand the importance an education can have on the life of a child, as well as the significant role parents and the community play in the development of these future leaders. They should be

commended for their leadership and vision which produced such meaningful results.

I would be remiss if I did not recognize the students at each of these institutions. While the adults have provided the foundation for a positive and educational classroom experience, ultimately the students decide to succeed for themselves, meeting and exceeding the high standards set for them. I am confident that we are raising the next generation of successful Americans to be productive and educated members of society. I am especially proud of the progress that these Montana students have made, and I urge them to keep up the good work. I am proud of each and every one of you. To the students, educators, and parents, thanks for all the good work you do.●

HONORING MAYOR JOHN O. COTANT

● Mr. CRAPO. Mr. President: I would like to pay special tribute today to a remarkable man who has dedicated the past 36 years of his life to the citizens of Chubbuck, ID. Mayor John O. Cotant entered the Chubbuck mayoral race the night before the elections in 1969. He won and has been mayor ever since. Through his dedication to youth and community improvement, Chubbuck has become the thriving town of 10,000 it is today. Under his exemplary leadership, Chubbuck increased the number of city parks from 1 to 14. He initiated the construction of a monument to veterans of our wars and his love of sports inspired him to promote a thriving youth sports program for the city. He brought critical infrastructure improvements to the community, to position Chubbuck for the vibrant growth it is experiencing today. John and his wife of 59 years, Alice, are the proud parents of 3, grandparents of 13 and great-grandparents of 19 children. He has been very involved in his church, serving as Bishop, the ecclesiastical teacher, of his LDS church congregation. At a robust 81, he says that he is going to pursue his personal interests of genealogy and a collection of city memorabilia, and make a point of not volunteering for anything controversial. I must say I understand the sentiment. Local public servants like John are the lifeblood of our civic community and our daily lives in rural towns not just in Idaho, but across the Nation. As a mayor of a smaller city, you are on duty and under the spotlight 24 hours a day. It is quite a testament to John's character, energy and spirit that he has served for so many years. I congratulate him on three and a half decades of community commitment service and wish him and Alice the very best in the next exciting chapter of their life together.●

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–212. A joint resolution adopted by the Legislature of the State of California relative to the ''Don't Ask, Don't Tell'' military policy; to the Committee on Armed Services.

SENATE JOINT RESOLUTION No. 11

Whereas, Since the 1994 codification into law by the United States Congress, and by the signature of the President, the policy now known as ''Don't Ask, Don't Tell, Don't Pursue, Don't Harass'' (National Defense Authorization Act of 1994 (Public Law 103–160)) has led to the discharge of a great number of lesbian and gay service members, thus ending their careers and burdening them with a lifelong stigma; and

Whereas, The capacity of the Armed Forces of the United States to carry out its missions, like the Global War on Terror, is hindered when competent and qualified individuals are involuntarily discharged from those forces; and

Whereas, The Armed Forces of the United States have been forced to retain Reserve and National Guard service members on active duty past standard deployment lengths in order to carry out its missions during the Global War on Terror; and

Whereas, The ability of the Armed Forces to recruit and retain the best and brightest Americans is hindered by excluding a section of the population solely because of sexual orientation; and

Whereas, Lesbian and gay service members have served honorably throughout United States history and continue to serve with distinction on active duty in the Global War on Terror, including in Operation Enduring Freedom in Afghanistan and Operation Iraqi Freedom in Iraq; and

Whereas, These men and women have achieved military honors, decorations, and promotions to the highest ranks of their respective services for their valor and service to the people of the United States; and

Whereas, America's allies in the war on terror, like the United Kingdom, Australia, and Israel, all allow lesbian and gay service members to serve openly; and

Whereas, The Department of Homeland Security, the Federal Bureau of Investigation, the Defense Intelligence Agency, the National Security Agency, the Central Intelligence Agency, and other federal departments handling national security allow their lesbian, gay, bisexual, and transgender personnel to serve openly; and

Whereas, A February 2005 Government Accountability Office report shows that more than 9,488 service members have been discharged under the ''Don't Ask, Don't Tell'' policy, including at least 757 service members in ''critical occupations,'' such as counterintelligence experts, at a cost to taxpayers of more than $190 million; and

Whereas, The Department of Defense reported that 209 language specialists have been discharged from the military under the ''Don't Ask, Don't Tell'' policy, including 54 Arabic and 9 Farsi translators, vitally important positions to intelligence gathering and in critical shortage; and

Whereas, Evidence from a study conducted by the Center for the Study Of Sexual Minorities in the Military suggests that the ''Don't Ask, Don't Tell'' policy increases gay troops' stress levels, lowers their morale, impairs their ability to form trusting bonds with their peers, restricts their access to medical care, psychological services and religious consultations, and limits their ability to advance professionally and their willingness to join and remain in the services; and

Whereas, Every Department of Defense authorized study has shown that there is no correlation between sexual orientation and unit cohesion in the Armed Forces; and

Whereas, The majority of American citizens support keeping trained and skilled openly gay and lesbian service members in the military; and

Whereas, The United States military's readiness to protect and defend our nation is severely compromised because of the discriminatory ''Don't Ask, Don't Tell'' policy that is arbitrarily enforced by commanders whose personal beliefs may influence their disciplinary actions; and

Whereas, Discharges under ''Don't Ask, Don't Tell'' are historically fewer when troop strength is low, as in times of war, which denotes the tacit recognition by the military that lesbian and gay service members are fit and capable of military service, thereby further illustrating the arbitrary enforcement of this policy; and

Whereas, California has 26 military bases which are home to tens of thousands of military personnel and their families, and, according to a 2004 Urban Institute study, an estimated 137,000 lesbian and gay veterans live in California; and

Whereas, The Legislature and courts of the State of California have extended protections based on sexual orientation and gender identity that affirm the equality under the law of lesbian, gay, bisexual, and transgender citizens in order to prevent invidious discrimination; and

Whereas, In 2004 the California Legislature passed, and the Governor signed, legislation that protects nonfederally recognized personnel in the California State Military from the threat of ''Don't Ask, Don't Tell''; and

Whereas, Military readiness is enhanced when every qualified, capable American, regardless of sexual orientation, is welcomed into our Armed Forces and has their talents utilized in the best interest of our national security; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature of the State of California respectfully urge the President and the Congress of the United States to adopt the Military Readiness Enhancement Act of 2005 (H.R. 1059) to end the discriminatory federal policy of ''Don't Ask, Don't Tell''; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President of the United States, to each Senator and Representative in the Congress of the United States, and to the presiding officer of each house of each state legislature of the several states.

POM–213. A resolution adopted by the Senate of the Legislature of the State of Michigan relative to expressing opposition to the study and construction of an international border crossing in the Downriver area; to the Committee on Commerce, Science, and Transportation.

SENATE RESOLUTION NO. 57

Whereas, The Detroit-Windsor and Port Huron-Sarnia border crossings of Southeast Michigan/Southwest Ontario are the busiest international crossings in North America, representing nearly 50 percent of the traffic volume crossing the United States/Canadian border. In 2000, American trade with Ontario reached $243 billion, which is larger than the total U.S. trade with Japan; and

Whereas, More than 75,000 vehicles use the Southeast Michigan/Southwest Ontario border crossings each day. Traffic at the Michigan and Canadian ports of entry has grown 44 percent from 19.7 million vehicles in 1990 to 28.4 million vehicles in 2000. Truck traffic at these ports has more than doubled from 2.5 million vehicles in 1990 to 5.1 million in 2000.

Over the next thirty years, the cross-border traffic along the Detroit-Windsor corridor is projected to increase 40 percent in car traffic and 120 percent in truck traffic. This corresponds to an increase in daily cross-border car trips from 52,000 to 70,000 and an increase in daily cross-border truck trips from 13,000 to 28,000; and

Whereas, The Canada-US-Ontario-Michigan Border Transportation Partnership is conducting a Planning/Need and Feasibility Study to examine existing and future cross-border transportation problems and opportunities within the Southeast Michigan and Southwest Ontario region. In June 2005, the partnership proposed several international crossing alternatives that address these identified transportation problems and opportunities. Each alternative would involve massive reconfiguration to either the I–275 or I–75 interchange area and significant expansion of either King Road, Pennsylvania Road, or Eureka Road to connect the proposed interchange areas to the river crossing plazas; and

Whereas, The Detroit River International Crossing Study proposes 12 river crossing plazas along the riverfront from Belle Isle to Grosse Ile. Four of the proposed plazas are located in the Downriver area. The first plaza consists of 173 acres located on the northeast corner of Fort Street and King Road in Trenton near the McLouth Steel property. The second proposed plaza is located in Trenton on the east side of Jefferson Avenue, north of King Road, on 217 acres owned by McLouth Steel. The third proposed plaza consists of 85 acres located at the Atofina Chemical Company, located south of Pennsylvania Road, west of Longsdorf Street in Riverview. The fourth proposed Downriver plaza is located at the Atofina Chemical Company on 85 acres located off Pennsylvania Road, east of Biddle Avenue, and south of Wyandotte Shores Golf Club in Wyandotte; and

Whereas, The reconfiguration of an interchange, the expansion of major roadways, and the construction of a plaza will have adverse effects on the quality of life in Downriver's 19 cities and townships. In particular, these wholesale transportation-related transformations will lead to plummeting property values that will have a devastating financial impact on the whole of Wayne County, particularly public schools. These changes will bring about excessive traffic-related noise that may have to be mitigated by the erection of intrusive noise barriers, thereby eroding community aesthetics and fueling negative public perception; and

Whereas, These transportation-related changes will also result in increased passenger vehicle and truck traffic. Residents near the recommended bridge plaza will face unacceptable health risks from the degraded local air quality caused by heavy-duty truck exhaust emissions. Heavy-duty trucks burn diesel fuel and are major emitters of nitrogen oxides and particulate matter. Nitrogen oxides emitted by on-road vehicles are a major contributor to high ozone levels in Southeast Michigan. The Downriver area will incur significant costs just to control emissions from current vehicle traffic in order to attain the federal ozone standard. Fine particulate matter emitted by diesel and gasoline engines is implicated as the cause of premature death in persons with cardiac and/or respiratory ailments after short-term exposure as well as being linked to an increased risk of lung cancer following long-term exposure; and

Whereas, The partnership also proposes the construction of one of three alternative bridges connecting the river crossing plazas to Ontario via Grosse Ile. Anyone of the alternative bridges would produce intolerable traffic noise that could not be mitigated by noise barriers, vegetation, buffer zones, or any other noise abatement method. The proposed King Road plazas bridge would span Grosse Ile along Horse Mill road, with an attendant plaza facility near Church and East River Roads. This proposed facility would either destroy or have a decidedly negative impact on hundreds of privately-owned residences, a Presbyterian Church and cemetery, a Roman Catholic Church and cemetery, sensitive wetlands, marshes, woods and transitional prairies, and a number of locations on the Michigan Register of Historic Sites. The proposed facility would also obliterate the historical landing site of Antoine de la Mothe Cadillac, who camped on Grosse Ile more than 300 years ago before proceeding upriver to settle modern-day Detroit. The two proposed Pennsylvania Road plaza bridges would extend over Hennepin Point, located on the northern end of Grosse Ile. Any one of the proposed bridges will pose significant problems for pilots flying out of Grosse Ile Municipal Airport; endanger the 27 species of waterfowl, 17 species of raptors (eagles, hawks, and falcons), 48 species of nonraptors (loons, warblers, neotropical songbirds, cranes, and shore birds); and bring peril to numerous species of dragonflies and butterflies that migrate to the Grosse Ile coastal wetlands; and

Whereas, The construction of an international bridge crossing in the Downriver area will have a detrimental impact on the Detroit River, the first river to be designated a bi-national Heritage River and an International Wildlife Refuge. As such, the river's marshes, coastal wetlands, islands, shoals, and other natural features are to be preserved and restored to protect wildlife habitat. The Detroit River is also a primary source of drinking water for Wayne County. This is important because an international bridge crossing may involve the dredging of the Black Lagoon, which is directly downstream from the McLouth Steel property. Sediments in this area have been well documented to contain high levels of mercury, PCBs, cadmium, chromium, copper, lead, zinc, oils, and grease, substances that are known to be hazardous to humans, wildlife, and aquatic species. Lead contamination levels in this vicinity also exceed human contact standards. Moreover, the construction of an international bridge will have injurious consequences on the small streams, ponds, and other sensitive ecosystems of the Downriver watershed caused by road salt runoff. Road deicing salts are contributing to the gradual salinization of the Detroit River and area groundwater supplies; now, therefore, be it

Resolved by the Senate, That we express opposition to the study and construction of an international border crossing in the Downriver area; and be it further

Resolved, That copies of this resolution be transmitted to the Office of the Governor, the Michigan Department of Transportation, the Federal Highway Administration, the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM–214. A joint resolution adopted by the Legislature of the State of California relative to stem cell research; to the Committee on Health, Education, Labor, and Pensions.

SENATE JOINT RESOLUTION NO. 17

Whereas, An estimated 128 million Americans suffer from the crippling economic and psychological burden of chronic, degenerative, and acute diseases, including diabetes, Parkinson's disease, cancer, and Alzheimer's disease; and,

Whereas, Chronic, degenerative, and acute disease result in extreme human loss and suffering for those who suffer from them and their families and caregivers, and result in hundreds of billions of dollars annually in medical treatment and lost productivity costs; and

Whereas, Stem cell research offers immense promise for developing new medical therapies for these debilitating diseases and a critical means to explore fundamental questions of biology and could lead to improved treatments and potential cures for diabetes, Parkinson's disease, Alzheimer's disease, spinal cord injuries, burns, cancer, heart disease, and other diseases; and

Whereas, The United States has historically taken a leading role in funding biomedical research and has been a haven for open scientific inquiry and technological innovation, and, as a result, is the preeminent world leader in biomedicine and biotechnology; and

Whereas; On August 9, 2001, the President adopted a policy that restricts federal funding for embryonic stem cell research to a limited number of embryonic stem cell lines that were in existence as of that time, and subsequent research has found those existing stem cell lines to be significantly limited in their ability to support stem cell research; and

Whereas, The United States House of Representatives has twice passed legislation to prohibit some forms of stem cell research, but voted on May 24, 2005, to allow federal funding for stem cell research using excess embryos from fertility clinics; and

Whereas, California voters approved Proposition 71 in November 2004, which will provide $3 billion over 10 years for stem cell research in California; and

Whereas. The Legislature has enacted legislation declaring that research involving the derivation and use of human stem cells, human embryonic germ cells, and human adult stem cells from any source, including somatic cell nuclear transplantation, shall be permitted in California, calling for the development of ethical guidelines for stem cell research, and prohibiting human cloning; and

Whereas, In 2005, the National Academy of Sciences issued guidelines for conducting human embryonic stem cell research in an ethical and responsible manner; and

Whereas, Similar guidelines are being developed by the California Institute for Regenerative Medicine and the State Department of Health Services; now, therefore, be it

Resolved by the Senate and the Assembly of the State of California, jointly, That the Legislature of the State of California hereby memorializes Congress and the President of the United States to: (1) lift restrictions on federal funding for stem cell research; (2) not impair the ability of researchers to conduct stem cell research applications that hold promise for developing therapies for treating and curing chronic diseases; (3) develop ethical guidelines for federally funded stem cell research; and (4) prohibit human cloning; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

POM–215. A resolution adopted by the Senate of the General Assembly of the Commonwealth of Pennsylvania relative to the Low-

Income Home Energy Assistance Program (LIHEAP); to the Committee on Health, Education, Labor, and Pensions.

Whereas, The Low-Income Home Energy Assistance Program (LIHEAP) was established by Congress as a federally funded program providing energy assistance to low-income persons for heating their homes; and

Whereas, Many Pennsylvanians received these energy assistance grants for several years; and

Whereas, Natural gas, electric and home heating oil prices have risen steadily over the past several years and are predicted to be even higher for this winter; and

Whereas, Home heating oil prices are predicted to increase by 52%; and

Whereas, Natural gas prices are predicted to increase by 36% or higher; and

Whereas, The Federal allocation for LIHEAP has remained at $2 billion for years; and

Whereas, The Commonwealth of Pennsylvania will receive $120 million, the same amount it received last year; and

Whereas, More than 70% of eligible residential customers in the Commonwealth of Pennsylvania are not able to receive assistance due to lack of funding; and

Whereas, Some increases in home heating prices is due to devastation from Hurricanes Katrina and Rita; and

Whereas, While the Gulf Coast states were directly struck by Hurricane Katrina and Rita, northeastern states have felt the impact of the storms through a sharp increase in natural gas, electric and home heating oil costs; and

Whereas, Gas companies in the Commonwealth of Pennsylvania receive 80% of their natural gas supply from the Gulf Coast suppliers; therefore be it

Resolved, That the Senate of the Commonwealth of Pennsylvania memorialize Congress to appropriate supplemental LIHEAP funds as part of any disaster relief legislation to assist those states which will be impacted by higher prices and shortages in the midst of a predicted harsh winter; and be it further

Resolved, That copies of this resolution be transmitted to the Clerk of the United States Senate and the Clerk of the United States House of Representatives.

POM–216. A resolution adopted by the City Council of the City of South Charleston, West Virginia relative to the withdrawal of troops from Iraq; to the Committee on Armed Services.

POM–217. A resolution adopted by the California State Lands Commission relative to opposing lifting of the Federal Moratorium on Oil and Gas Leasing off the California Coast; to the Committee on Energy and Natural Resources.

POM–218. A resolution adopted by the Jefferson Davis Parish Police Jury of the State of Louisiana relative to temporarily removing the embargo restrictions on Cuba; to the Committee on Foreign Relations.

POM–219. A resolution adopted by the Board of Supervisors of the County of Los Angeles of the State of California relative to supporting House Resolution 316 and House Concurrent Resolution 195 which relate to the Armenian Genocide of 1915 to 1923; to the Committee on Foreign Relations.

POM–220. A resolution adopted by the Township Council, Township of South Brunswick, State of New Jersey relative to expressing disapproval of those sections of the Patriot Act that may infringe upon fundamental civil rights; to the Committee on the Judiciary.

EXECUTIVE REPORT OF COMMITTEE

The following executive report of committee was submitted:

Mr. STEVENS. Mr. President, for the Committee on Commerce, Science, and Transportation I report favorably the following nomination list which was printed in the RECORD on the date indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that this nomination lie at the Secretary's desk for the information of Senators.

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

Coast Guard nomination of Kathleen M. Donohoe to be Captain.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

EXECUTIVE REPORT OF COMMITTEE

The following executive report of committee was submitted:

By Mr. LUGAR, from the Committee on Foreign Relations:

[Treaty Doc. 109–2 Convention Strengthening Inter-American Tuna Commission (Exec. Rept. No. 109–7)]

TEXT OF THE RESOLUTION OF RATIFICATION AS REPORTED BY THE COMMITTEE ON FOREIGN RELATIONS

Resolved (two-thirds of the Senators present concurring therein), That the Senate advises and consents to the ratification of the Convention for the Strengthening of the Inter-American Tropical Tuna Commission Established by the 1949 Convention Between the United States of America and the Republic of Costa Rica, with Annexes, adopted on June 27, 2003, in Antigua, Guatemala, and signed by the Untied States on November 14, 2003 (Treaty Doc. 109–2).

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. DURBIN (for himself, Mr. AKAKA, and Mr. SCHUMER):

S. 2002. A bill to provide protection against bovine spongiform encephalopathy and other prion diseases; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. WYDEN:

S. 2003. A bill to make permanent the authorization for watershed restoration and enhancement agreements; to the Committee on Energy and Natural Resources.

By Mr. VITTER:

S. 2004. A bill to amend title 23, United States Code, to establish a demonstration project to begin correcting structural bridge deficiencies; to the Committee on Environment and Public Works.

By Mr. REED:

S. 2005. A bill to provide for the reviewing, updating, and maintenance of National Flood Insurance Program rate maps, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. INHOFE (for himself and Mr. JEFFORDS):

S. 2006. A bill to provide for recovery efforts relating to Hurricanes Katrina and Rita for Corps of Engineers projects; to the Committee on Environment and Public Works.

By Mr. SALAZAR (for himself and Mr. MCCAIN):

S. 2007. A bill to examine the circumstances contributing to the problems facing the health care system of the United States and to develop public and private policies as appropriate to address rising health care costs and the number of uninsured Americans; to the Committee on Health, Education, Labor, and Pensions.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. MCCAIN (for himself and Mr. BIDEN):

S. Res. 311. A resolution expressing support for the people of Sri Lanka in the wake of the tsunami and the assassination of the Sri Lankan Foreign Minister and urging support and respect for free and fair elections in Sri Lanka; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 333

At the request of Mr. SANTORUM, the names of the Senator from Illinois (Mr. DURBIN), the Senator from New Hampshire (Mr. SUNUNU) and the Senator from North Dakota (Mr. DORGAN) were added as cosponsors of S. 333, a bill to hold the current regime in Iran accountable for its threatening behavior and to support a transition to democracy in Iran.

S. 431

At the request of Mr. DEWINE, the names of the Senator from Indiana (Mr. LUGAR) and the Senator from Virginia (Mr. ALLEN) were added as cosponsors of S. 431, a bill to establish a program to award grants to improve and maintain sites honoring Presidents of the United States.

S. 484

At the request of Mr. WARNER, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 484, a bill to amend the Internal Revenue Code of 1986 to allow Federal civilian and military retirees to pay health insurance premiums on a pretax basis and to allow a deduction for TRICARE supplemental premiums.

S. 627

At the request of Mr. HATCH, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 627, a bill to amend the Internal Revenue Code of 1986 to permanently extend the research credit, to increase the rates of the alternative incremental credit, and to provide an alternative simplified credit for qualified research expenses.

S. 632

At the request of Mr. LUGAR, the names of the Senator from Arizona (Mr. MCCAIN) and the Senator from Ohio (Mr. DEWINE) were added as cosponsors of S. 632, a bill to authorize the extension of unconditional and permanent nondiscriminatory treatment (permanent normal trade relations treatment) to the products of Ukraine, and for other purposes.

S. 695

At the request of Mr. COCHRAN, the names of the Senator from Mississippi

(Mr. LOTT) and the Senator from Louisiana (Mr. VITTER) were added as cosponsors of S. 695, a bill to suspend temporarily new shipper bonding privileges.

S. 757

At the request of Mr. CHAFEE, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of S. 757, 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. 1272

At the request of Mr. NELSON of Nebraska, the names of the Senator from Mississippi (Mr. COCHRAN) and the Senator from Kansas (Mr. BROWNBACK) were added as cosponsors of S. 1272, a bill to amend title 46, United States Code, and title II of the Social Security Act to provide benefits to certain individuals who served in the United States merchant marine (including the Army Transport Service and the Naval Transport Service) during World War II.

S. 1779

At the request of Mr. AKAKA, the names of the Senator from Connecticut (Mr. DODD) and the Senator from Hawaii (Mr. INOUYE) were added as cosponsors of S. 1779, a bill to amend the Humane Methods of Livestock Slaughter Act of 1958 to ensure the humane slaughter of nonambulatory livestock, and for other purposes.

S. 1813

At the request of Mr. CRAIG, the name of the Senator from Colorado (Mr. SALAZAR) was added as a cosponsor of S. 1813, a bill to amend titles 10 and 38 of the United States Code, to modify the circumstances under which a person who has committed a capital offense is denied certain burial-related benefits and funeral honors.

S. 1934

At the request of Mr. SPECTER, the names of the Senator from Hawaii (Mr. AKAKA) and the Senator from New York (Mr. SCHUMER) were added as cosponsors of S. 1934, a bill to reauthorize the grant program of the Department of Justice for reentry of offenders into the community, to establish a task force on Federal programs and activities relating to the reentry of offenders into the community, and for other purposes.

S. 1959

At the request of Mr. KERRY, the names of the Senator from Illinois (Mr. DURBIN) and the Senator from Maryland (Mr. SARBANES) were added as cosponsors of S. 1959, a bill to direct the Architect of the Capitol to obtain a statue of Rosa Parks and to place the statue in the United States Capitol in National Statuary Hall.

S. 1969

At the request of Mr. BAUCUS, the names of the Senator from New York (Mrs. CLINTON), the Senator from Maryland (Ms. MIKULSKI), the Senator from New Jersey (Mr. CORZINE), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from North Dakota (Mr. DORGAN), the Senator from Colorado (Mr. SALAZAR), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Minnesota (Mr. DAYTON), the Senator from Washington (Ms. CANTWELL) and the Senator from West Virginia (Mr. ROCKEFELLER) were added as cosponsors of S. 1969, a bill to express the sense of the Senate regarding Medicaid reconciliation legislation to be reported by a conference committee during the 109th Congress.

S.J. RES. 25

At the request of Mr. TALENT, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S.J. Res. 25, a joint resolution proposing an amendment to the Constitution of the United States to authorize the President to reduce or disapprove any appropriation in any bill presented by Congress.

S. CON. RES. 62

At the request of Mr. MCCONNELL, the names of the Senator from Hawaii (Mr. INOUYE), the Senator from Ohio (Mr. VOINOVICH), the Senator from Nevada (Mr. ENSIGN), the Senator from California (Mrs. BOXER), the Senator from Hawaii (Mr. AKAKA), the Senator from Illinois (Mr. DURBIN) and the Senator from Maryland (Mr. SARBANES) were added as cosponsors of S. Con. Res. 62, a concurrent resolution directing the Joint Committee on the Library to procure a statue of Rosa Parks for placement in the Capitol.

S. RES. 232

At the request of Mr. MARTINEZ, his name was added as a cosponsor of S. Res. 232, a resolution celebrating the 40th anniversary of the enactment of the Voting Rights Act of 1965 and reaffirming the commitment of the Senate to ensuring the continued effectiveness of the act in protecting the voting rights of all citizens of the United States.

AMENDMENT NO. 2456

At the request of Mrs. DOLE, the names of the Senator from Rhode Island (Mr. CHAFEE) and the Senator from Ohio (Mr. DEWINE) were added as cosponsors of amendment No. 2456 proposed to S. 1042, an original bill to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

AMENDMENT NO. 2468

At the request of Mrs. DOLE, the names of the Senator from Florida (Mr. NELSON), the Senator from Missouri (Mr. TALENT), the Senator from Kansas (Mr. ROBERTS) and the Senator from Iowa (Mr. HARKIN) were added as cosponsors of amendment No. 2468 proposed to S. 1042, an original bill to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DURBIN (for himself, Mr. AKAKA, and Mr. SCHUMER):

S. 2002. A bill to provide protection against bovine spongiform encephalopathy and other prion diseases; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. DURBIN. Mr. President, I am introducing a bill to strengthen our Nation's firewalls against prion diseases. This bill would prevent the spread of mad cow disease, or bovine spongiform encephalopathy, BSE. It also addresses other forms of prion disease that affect humans and animals.

For many years, we thought that we didn't have BSE in the United States. But now we have to assume that the disease does exist in our cattle, though it has been detected only twice.

In June 2005, U.S. Department of Agriculture, USDA, officials announced that a Texas cow had tested positive for BSE.

It is troubling that the USDA and Food and Drug Administration, FDA, investigation could not pin down how the cow became infected. Reports compiled for the Texas Animal Health Commission and obtained by The Dallas Morning News showed that 85 percent of the cattle traced in the investigation had already been sent for slaughter.

We should not settle for half-measures in BSE control. Yet nearly two years after USDA and FDA announced efforts to strengthen our nation's firewalls against BSE, critical gaps remain in our defenses.

Just last week, the Government Accountability Office released a study that found that testing of cattle feed is at times too slow to prevent cattle from eating feed that might be contaminated.

Poultry litter, plate waste, and pet food can still be fed to cattle, creating loopholes in the ruminant feed ban.

In addition, the USDA Office of the Inspector General has raised concerns about the design of USDA's surveillance program, including whether the Agency is appropriately selecting animals for testing and testing an adequate number of older cattle.

To fully protect animal and public health, I am reintroducing my bill to strengthen our Nation's firewalls against prion diseases like BSE. My bill would close loopholes in the ruminant feed ban. It would ensure that all older cattle are tested for BSE. In addition, my bill would improve enforcement of the feed ban and take steps to ensure that meat intended for human

consumption is free of tissues that could harbor infectious prions.

The bill also would require the Secretary of Health and Human Services to assess the risk of transmission of human prion diseases through blood and surgical equipment and strengthen surveillance of prion diseases in humans.

I urge my colleagues to support this bill.

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. 2002

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 ''BSE and Other Prion Disease Prevention and Public Health Protection Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) BSE.—The term ''BSE'' means bovine spongiform encephalopathy.

(2) COVERED ARTICLE.—

(A) IN GENERAL.—The term ''covered article'' means—

(i) food or feed for a human or animal;

(ii) a food or nutritional supplement;

(iii) a medicine;

(iv) a pituitary-derived hormone;

(v) transplant material;

(vi) a fertilizer derived from animals;

(vii) a cosmetic; and

(viii) any other article of a kind that is ordinarily ingested, implanted, or otherwise taken into a human or animal.

(B) EXCLUSIONS.—The term ''covered article'' does not include—

(i) an unprocessed agricultural commodity that is readily identifiable as nonanimal in origin, such as a vegetable, grain, or nut;

(ii) an article described in subparagraph (A) that, based on compelling scientific evidence, the Secretary determines does not pose a risk of transmitting prion disease; or

(iii) an article regulated by the Secretary that, as determined by the Secretary—

(I) poses a minimal risk of carrying prion disease; and

(II) is necessary to protect animal health or public health.

(3) CWD.—The term ''CWD'' means chronic wasting disease.

(4) PRION DISEASE.—The term ''prion disease'' means—

(A) a transmissible spongiform encephalopathy (including prion diseases that affect humans, cattle, bison, sheep, goats, deer, elk, and mink); and

(B) any related disease, as determined by the Secretary in consultation with the Secretary of Agriculture.

(5) SPECIFIED RISK MATERIAL.—

(A) IN GENERAL.—The term ''specified risk material'' means—

(i) the skull, brain, trigeminal ganglia, eyes, tonsils, spinal cord, vertebral column, or dorsal root ganglia of—

(I) cattle and bison 30 months of age and older; or

(II) sheep, goats, deer, and elk 12 months of age and older;

(ii) the intestinal tract of a ruminant of any age; or

(iii) any other material of a ruminant that may carry a prion disease, as determined by the Secretary in consultation with the Secretary of Agriculture, based on scientifically credible research.

(B) MODIFICATION.—The Secretary, in consultation with the Secretary of Agriculture, may modify the definition of specified risk material based on scientifically credible research.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

SEC. 3. PROTECTION OF BORDERS.

(a) PROHIBITIONS.—

(1) DISCLOSURE REQUIREMENT.—It shall be unlawful for any person to import a covered article—

(A) in the case of a covered article that contains animal-derived material, if the covered article does not exhibit or contain, or is not otherwise accompanied by, a statement in English that—

(i) states that the covered article contains animal-derived material;

(ii) states the common English name of the animal from which the material in the article is derived; and

(iii) if the animal from which the material in the covered article is derived is a ruminant—

(I) identifies the country of origin of the ruminant; and

(II) states whether specified risk material from the ruminant is or may be part of the covered article; or

(B) in the case of a covered article that does not contain animal-derived material, if the covered article does not exhibit or contain, or is not otherwise accompanied by, a statement in English that states that the covered article does not contain animal-derived material.

(2) PROHIBITION OF IMPORTATION.—It shall be unlawful for any person to import a covered article described in section 2(2)(A) if, as determined by the Secretary of Agriculture—

(A) the article contains animal-derived material from a ruminant that was in any country at a time at which there was a risk of transmission of BSE in the country; and

(B) the country did not meet the guidelines on BSE established in the World Organization for Animal Health's (OIE) Terrestrial Animal Health Code.

(b) REGULATIONS.—Not later than 1 year after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Agriculture, shall promulgate regulations that establish standards for compliance with this section, including—

(1) the manner of disclosure that shall be considered to be in compliance with this subsection;

(2) any manner of disclosure that shall be considered not to be in compliance with this subsection; and

(3) definitions of the terms ''animal-derived material'', ''country of origin'', and other terms used but not defined in this section.

(c) INTERIM GUIDANCE.—Until the date on which final regulations promulgated under subsection (b) become effective, the Secretary shall provide guidance and advice on general applicability of, and compliance with, this section.

(d) ENFORCEMENT.—For the purposes of administering the customs laws of the United States, the requirement to comply with subsection (a)(1) shall be treated as a requirement to mark an article under section 304 of the Tariff Act of 1930 (19 U.S.C. 1304).

SEC. 4. PROTECTION OF FOOD AND ANIMAL FEED SUPPLIES AND PUBLIC HEALTH.

(a) COVERED ARTICLES.—

(1) PROHIBITION.—It shall be unlawful for any person to introduce into interstate or foreign commerce a covered article if the covered article contains—

(A)(i) specified risk material from a ruminant; or

(ii) any material from a ruminant that was in any foreign country at a time at which there was a risk of transmission of BSE in the country and the country did not meet the guidelines on BSE established in the World Organization for Animal Health's (OIE) Terrestrial Animal Health Code, as determined by the Secretary of Agriculture; or

(B) any material from a ruminant exhibiting signs of a neurological disease.

(2) REPORTING.—The Secretary of Agriculture will make publicly available quarterly reports containing the number of noncompliance reports relating to regulations on specified risk materials and the reasons for noncompliance.

(3) PUNITIVE OR RETALIATORY ACTION.—It shall be unlawful to take punitive or retaliatory action against inspectors and other employees who report cases of noncompliance.

(4) REGULATIONS.—

(A) SECRETARY OF AGRICULTURE.—Not later than 1 year after the date of enactment of this Act, the Secretary of Agriculture, in consultation with the Secretary, shall promulgate regulations that establish standards for compliance with this subsection, including—

(i) requirements for the disposal of dead and nonambulatory ruminants on a farm or ranch so that the prion disease, if present in the animals, will not be recycled or expose other animals;

(ii) requirements for the registration with the Food and Drug Administration of all renderers and all persons that engage in the business of buying, selling, or transporting—

(I) dead, dying, disabled, or diseased livestock; or

(II) parts of the carcasses of livestock that die other than by slaughter;

(iii) requirements for the handling, transportation, and disposal of dead, dying, disabled, and diseased livestock that are condemned on ante-mortem or post-mortem inspection in accordance with any policy that is developed for the disposal of dead or nonambulatory ruminants on the farm; and

(iv) a requirement that slaughterhouses institute best practices to prevent contamination of material intended for human consumption with specified risk material.

(B) SECRETARY.—Not later than 1 year after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Agriculture, shall promulgate regulations that establish standards for compliance with this subsection, including a prohibition on the use of salvaged pet food, plate waste, poultry litter, and blood and blood products in animal feed intended for food producing ruminants, with an exemption for the use of blood and blood products in bovine biologics.

(b) ANIMAL FEED.—

(1) MONITORING AND EVALUATION.—The Secretary shall annually conduct a formal evaluation of the implementation of section 589.2000 of title 21, Code of Federal Regulations (or a successor regulation), including an assessment of coordination between the Food and Drug Administration, the Department of Agriculture, and State agencies.

(2) REGISTRATION OF BUSINESSES.—Not later than 1 year after the date of enactment of this Act, the Secretary shall promulgate regulations for the registration with the Food and Drug Administration of all animal feed manufacturers, transporters, on-farm mixers, and other animal feed industry businesses that are subject to section 589.2000 of title 21, Code of Federal Regulations (or a successor regulation).

(3) PREVENTION OF ADMIXING.—Not later than 1 year after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Agriculture, shall promulgate regulations and an inspection plan to

prevent admixing of ruminant and nonruminant feed by animal feed manufacturers, animal feed transporters, and producers that feed both ruminants and nonruminants on the same farm.

(4) ENFORCEMENT PLAN.—

(A) IN GENERAL.—The Secretary shall develop and implement a plan for enforcing section 589.2000 of title 21, Code of Federal Regulations (or a successor regulation).

(B) CONTENTS.—The plan shall include—

(i) a computer database that would allow for effective management of inspection data;

(ii) a hierarchy of enforcement actions to be taken;

(iii) timeframes for persons that are subject to that section to correct violations; and

(iv) timeframes for followup inspections to confirm that violations are corrected.

(5) REVIEW OF EXCLUSION OF CERTAIN PORTIONS OF ANIMALS FROM DEFINITION OF PROTEIN DERIVED FROM MAMMALIAN TISSUES.—On the motion of the Secretary or on the petition of any person that, citing scientifically credible evidence, demonstrates that there is reason to believe that any of the portions of mammalian animals excluded from the definition of protein derived from mammalian tissues in section 589.2000(a) of title 21, Code of Federal Regulations (or a successor regulation), may carry prion disease, the Secretary shall commence a proceeding to determine whether the exclusion should be modified or stricken.

(6) LABELING REQUIREMENTS FOR ANIMAL FEED.—Animal feed intended for export shall be subject to the labeling requirements for animal feed described in section 589.2000 of title 21, Code of Federal Regulations (or a successor regulation).

SEC. 5. SURVEILLANCE OF BSE AND PRION DISEASES IN HUMANS AND ANIMALS.

(a) RUMINANT IDENTIFICATION PROGRAM.—Title I of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) is amended by adding at the end the following:

''SEC. 25. RUMINANT IDENTIFICATION PROGRAM.

''(a) IN GENERAL.—The Secretary shall accelerate the establishment of a ruminant identification program, so that, not later than 1 year after the date of enactment of this section, the program will be capable of tracing, within 48 hours after an animal is diagnosed with any reportable animal disease or any condition that can cause disease in humans, the movements of all exposed animals from birth to slaughter.

''(b) REQUIREMENTS.—

''(1) IN GENERAL.—Under the ruminant identification program, the Secretary shall identify cattle, sheep, goats, bison, deer, and elk and any other ruminant species intended for human consumption through a nationally recognizable uniform numbering system under which an identification number is assigned to—

''(A) each premises of a producer; and

''(B) each individual animal or group or lot of animals, as determined by the Secretary.

''(2) CONTINUATION OF EXISTING PROGRAMS.—The program shall augment, and not supplant, nationally recognized systems in existence on the date of enactment of this section, such as the program for scrapie traceback and eradication in sheep and goats.

''(c) PROHIBITION OR RESTRICTION ON ENTRY.—The Secretary may prohibit or restrict entry into any slaughtering establishment inspected under this Act of any cattle, sheep, goats, bison, deer, elk, or other ruminant intended for human consumption that is not identified under the program.

''(d) RECORDS.—

''(1) IN GENERAL.—The Secretary may require that a producer required to identify livestock under the program maintain records, as prescribed by the Secretary, regarding the purchase, sale, and identification of livestock for such period of time as the Secretary prescribes.

''(2) ACCESS.—A producer shall, at all reasonable times, on notice by an authorized representative of the Secretary, allow the representative access to examine and copy the records described in paragraph (1).

''(e) PROHIBITIONS.—It shall be unlawful for a producer to—

''(1) falsify or misrepresent to any other person or to the Secretary any information relating to any premises at which any cattle, sheep, swine, goats, bison, deer, elk, or other ruminant intended for human consumption, or carcasses thereof, are held; or

''(2) alter, detach, or destroy any records or means of identification prescribed by the Secretary for use in determining the premises at which any cattle, sheep, swine, goats, bison, deer, elk, or other ruminant intended for human consumption, or carcasses thereof, are held.''.

(b) PROGRAMS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act—

(A) the Secretary of Agriculture shall develop programs to—

(i)(I) waive diagnostic laboratory charges for the diagnosis of neurological disease in ruminants and mink;

(II) provide compensation for each submission payable to the attending veterinarian to pay the costs of obtaining and processing neurological samples; and

(III) develop a program to pay a fee to renderers or producers for each cattle head not already tested that is submitted to a certified lab for BSE testing;

(ii)(I) fund the development of the national animal health laboratory network;

(II) expand the network to include all certified Federal, State, and university veterinary diagnostic laboratories; and

(III) facilitate the timely processing of samples from surveillance and epidemiological investigation;

(iii) require rapid prion disease screening tests on—

(I) all cattle and bison 30 months of age and older and all sheep, goats, deer, and elk 12 months of age and older presented for slaughter and intended for human consumption; and

(II) all such livestock of a younger age than either of the ages specified in subclause (I) if the Secretary determines, based on scientifically credible research, that screening of livestock of a younger age should be conducted;

(iv) require rapid prion disease screening tests on all nonambulatory ruminants, including all ruminants exhibiting neurological signs, when presented at a slaughterhouse or for disposal;

(v) ensure that—

(I) any ruminant tested for BSE is excluded from use in any animal feed until the test is confirmed negative in writing that clearly identifies the carcass with the negative test result; and

(II) all ruminants exhibiting neurological signs are excluded from the human food supply regardless of the results of the BSE test;

(vi) expand, in conjunction with the Secretary of the Interior, the collection of animal tissue by Federal, State, tribal, and local agencies for testing for chronic wasting disease;

(vii) develop programs to require CWD herd certification and interstate movement restrictions for farm raised deer and elk;

(viii) develop a coordinated strategy to identify resources needed to increase inspections of imported goods; and

(ix) allow qualified entities to conduct additional voluntary rapid prion disease screening tests; and

(B) the Secretary shall develop programs to—

(i) expand survey efforts for prion diseases in humans, in conjunction with the National Prion Disease Pathology Research Center at Case Western Reserve University;

(ii) evaluate the effectiveness of practices in effect as of the date of enactment of this Act to—

(I) protect the human blood supply from contamination from blood infected with prion disease; and

(II) prevent transmission of BSE through contaminated medical equipment; and

(iii) develop a coordinated strategy to identify resources needed to increase inspections of imported goods.

(2) DEFINITION OF QUALIFIED ENTITY.—For purposes of paragraph (1)(A)(ix), the term ''qualified entity'' means a person or a State that—

(A) uses rapid test technology approved by the Secretary of Agriculture for the detection of BSE in cattle; and

(B) meets or exceeds standards established by the Secretary for—

(i) laboratory sample collection and chain of custody;

(ii) sample and laboratory methods quality control; and

(iii) laboratory safety and quality.

(c) LIAISON.—Each of the Secretary and the Secretary of Agriculture shall establish liaison positions at each appropriate Undersecretary level to ensure adequate coordination and communication between the Department of Health and Human Services and the Department of Agriculture regarding prion diseases.

(d) TASK FORCE.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary and the Secretary of Agriculture shall jointly establish a task force on prion diseases to provide recommendations to Congress on the status of all surveillance and research programs.

(2) MEMBERSHIP.—The Task Force shall include representatives of—

(A) the Food Safety and Inspection Service;

(B) the Animal and Plant Health Inspection Service;

(C) the Agricultural Research Service;

(D) the Food and Drug Administration;

(E) the Centers for Disease Control and Prevention;

(F) the National Institutes of Health;

(G) the Customs Service;

(H) the National Prion Research Program;

(I) the Public Health Service; and

(J) any other Federal Agency the assistance of which the President determines is required to carry out this subsection.

(3) EXISTING TASK FORCE.—The Secretary may expand or amend an existing task force to perform the duties of the task force under this section.

(4) DUTIES.—The task force shall—

(A) evaluate, with respect to prion diseases, the need for structural changes in and among Federal agencies that exercise jurisdiction over food safety and other aspects of public health protection;

(B) prioritize prion disease resource and prion disease research needs at all Federal agencies that exercise jurisdiction over matters relating to prion diseases, including—

(i) genetic markers for all species affected by prion disease;

(ii) in vivo diagnostic tests;

(iii) human blood supply diagnostic tests;

(iv) therapies for humans and animals;

(v) processing techniques that denature the prion protein in carcasses and other materials; and

(vi) development of stunning devices that are humane, protect worker safety, and do not allow contamination of meat products; and

(C) perform such other duties pertaining to surveillance and research of prion disease as the Secretary may specify.

(5) PRELIMINARY RECOMMENDATIONS.—Not later than 180 days after the date of enactment of this Act, the task force shall submit to Congress any preliminary recommendations of the task force.

(6) FINAL RECOMMENDATIONS.—Not later than 1 year after the date of enactment of this Act, the task force shall submit to Congress the final recommendations of the task force.

SEC. 6. ENFORCEMENT.

(a) COOPERATION.—The Secretary and the heads of other Federal agencies, as appropriate, shall cooperate with the Attorney General in enforcing this Act.

(b) DUE PROCESS.—Any person subject to enforcement action under this section shall have the opportunity for an informal hearing on the enforcement action as soon as practicable after, but not later than 10 days after, the enforcement action is taken.

(c) REMEDIES.—In addition to any remedies available under other provisions of law, the head of a Federal agency may enforce this Act by—

(1) seizing and destroying an article that is introduced into interstate or foreign commerce in violation of this Act; or

(2) issuing an order requiring any person that introduces an article into interstate or foreign commerce in violation of this Act—

(A) to cease the violation;

(B)(i) to recall any article that is sold; and

(ii) to refund the purchase price to the purchaser;

(C) to destroy the article or forfeit the article to the United States for destruction; or

(D) to cease operations at the facility at which the article is produced until the head of the appropriate Federal agency determines that the operations are no longer in violation of this Act.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this Act—

(1) $100,000,000 for each of fiscal years 2007 and 2008; and

(2) such sums as are necessary for each subsequent fiscal year.

(b) ALLOCATION OF FUNDS.—

(1) IN GENERAL.—Of the funds made available for each fiscal year under subsection (a)—

(A) 30 percent shall be available to the Secretary; and

(B) 70 percent shall be available to the Secretary of Agriculture.

(2) MODIFICATION OF ALLOCATIONS.—The President may alter the allocation of funding under paragraph (1) as needed to better protect the public against prion disease.

By Mr. WYDEN:

S. 2003. A bill to make permanent the authorization for watershed restoration and enhancement agreements; to the Committee on Energy and Natural Resources.

Mr. WYDEN. Mr. President, the legislation I introduce today reauthorizes a very successful cooperative watershed restoration program that I originally sponsored, and that was originally enacted for the Forest Service, in the fiscal year 1999 Interior Appropriations bill. The original legislation lasted through fiscal year 2001 after which it was reauthorized by the Appropriations Committees, at my request, through fiscal year 2005 and then again through fiscal year 2011. It is time this legislation had a full hearing in the Energy and Natural Resources Committee and was made a permanent authority.

The bill making what is commonly referred to as the Wyden amendment permanent authorizes the Secretary of Agriculture to use appropriated Forest Service funds for watershed restoration and enhancement agreements that benefit the ecological health of National Forest System lands and watersheds. The Wyden Amendment does not require additional funding, but allows the Forest Service to leverage scarce restoration dollars thereby allowing the Federal dollars to stretch farther. During the 7 years the program has existed the Forest Service has leveraged three dollars for every Forest Service dollar spent on these agreements.

The Wyden amendment has resulted in countless Forest Service cooperative agreements with neighboring State and local land owners to accomplish high priority restoration, protection and enhancement work on public and private watersheds. The projects authorized by these agreements have improved watershed health and fish habitat through the control of invasive species, culvert replacement, and other riparian zone improvement projects. In addition to ecological restoration, use of the Wyden amendment has improved cooperative relationships between the Forest Service, private land owners, State agencies and other federal agencies.

I am hopeful that my colleagues on the Energy and Natural Resources Committee will have a hearing on this program soon to highlight its successes and that thereafter this legislation can pass the Senate expeditiously.

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. 2003

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 ''Watershed Restoration and Enhancement Agreements Act of 2005''.

SEC. 2. WATERSHED RESTORATION AND ENHANCEMENT AGREEMENTS.

Section 323(a) of the Department of the Interior and Related Agencies Appropriations Act, 1999 (16 U.S.C. 1011 note; Public Law 105–277), is amended by striking ''each of fiscal years 2006 through 2011'' and inserting ''fiscal year 2006 and each fiscal year thereafter''.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 311—EXPRESSING SUPPORT FOR THE PEOPLE OF SRI LANKA IN THE WAKE OF THE TSUNAMI AND THE ASSASINATION OF THE SRI LANKAN FOREIGN MINISTER AND URGING SUPPORT AND RESPECT FOR FREE AND FAIR ELECTIONS IN SRI LANKA

Mr. MCCAIN (for himself and Mr. BIDEN) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 311

Whereas, on December 26, 2004, Sri Lanka was struck by a tsunami that left some 30,000 dead and hundreds of thousands of people homeless;

Whereas the United States and the world community recognized the global importance of preventing that tragedy from spiraling into an uncontrolled disaster and sent aid to Sri Lanka to provide immediate relief;

Whereas the massive tsunami reconstruction effort in Sri Lanka creates significant challenges for that country's struggling democracy;

Whereas the democratic process in Sri Lanka is further challenged by the refusal of the Liberation Tigers of Tamil Eelam, a group that the Secretary of State has designated as a Foreign Terrorist Organization, to renounce violence as a means of effecting political change;

Whereas, on August 12, 2005, the Sri Lankan Foreign Minister Lakhsman Kadirgamar was assassinated at his home in Colombo in a brutal terrorist act that has been widely attributed to the Liberation Tigers of Tamil Eelam by officials in Sri Lanka, the United States, and other countries;

Whereas democratic elections are scheduled to be held in Sri Lanka on November 17, 2005;

Whereas nondemocratic foreign powers and private sources have reportedly been aiding and funding various political factions in Sri Lanka, including both extremist Sinhalese and extremist Tamil parties or groups; and

Whereas the United States has an interest in a free and fair democratic process in Sri Lanka, and the peaceful resolution of the insurgency that has afflicted Sri Lanka for more than two decades: Now, therefore, be it

Resolved, That the Senate—

(1) expresses its support for the people of Sri Lanka as they recover from the devastating tsunami that occurred on December 26, 2004, and the assassination of the Sri Lankan Foreign Minister Lakhsman Kadirgamar on August 12, 2005;

(2) expresses its support for the courageous decision by the democratically-elected Government of Sri Lanka, following the assassination of Foreign Minister Kadirgamar, to remain in discussions with the Liberation Tigers of Tamil Eelam in an attempt to resolve peacefully the issues facing the people of Sri Lanka;

(3) urges all parties in Sri Lanka to remain committed to the negotiating process and to make every possible attempt at national reconciliation; and

(4) urges all outside parties, including governments of foreign countries, private individuals, and other organizations, to support and respect a free and fair democratic process in the Sri Lankan elections scheduled to be held on November 17, 2005, and to work to prevent extremist groups in Sri Lanka from interfering with that process.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2523. Mr. BINGAMAN proposed an amendment to amendment SA 2515 proposed by Mr. GRAHAM (for himself, Mr. KYL, Mr. CHAMBLISS, and Mr. CORNYN) to the bill S. 1042, to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

SA 2524. Mr. GRAHAM (for himself, Mr. LEVIN, and Mr. KYL) proposed an amendment to amendment SA 2515 proposed by Mr. GRAHAM (for himself, Mr. KYL, Mr. CHAMBLISS, and Mr. CORNYN) to the bill S. 1042, supra.

TEXT OF AMENDMENTS

SA 2523. Mr. BINGAMAN proposed an amendment to amendment SA 2515 proposed by Mr. GRAHAM (for himself, Mr. KYL, Mr. CHAMBLISS, and Mr. CORNYN) to the bill S. 1042, to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; as follows:

Strike subsection (d) and insert the following:

(d) JUDICIAL REVIEW OF DETENTION OF ENEMY COMBATANTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to consider an application for writ of habeas corpus filed by or on behalf of an alien outside the United States (as that term is defined in section 101(a)(38) of the Immigration and Naturalization Act (8 U.S.C. 1101(a)(38))—

(A) who is, at the time a request for review by such court is filed, detained by the Department of Defense at Guantanamo Bay, Cuba; and

(B) for whom a Combatant Status Review Tribunal has been conducted, pursuant to applicable procedures specific by the Department of Defense.

(2) EXCEPTIONS.—This subsection does not apply to the following:

(A) An individual charged with an offense before a military commission.

(B) An individual who is not designated as an enemy combatant following a combatant status review, but who continues to be held by the United States Government.

(3) VENUE.—Review under paragraph (1) shall commence in the United States Court of Appeals for the District of Columbia Circuit.

(4) CLAIMS REVIEWABLE.—The United States Court of Appeals for the District of Columbia Circuit may not, in a review under paragraph (1) with respect to an alien, consider claims based on living conditions, but may only hear claims regarding—

(A) whether the status determination of the Combatant Status Review Tribunal with regard to such alien was consistent with the procedures and standards specified by the Secretary of Defense for Combatant Status Review Tribunals;

(B) whether such status determination was supported by sufficient evidence and reached in accordance with due process of law, provided that statements obtained through undue coercion, torture, or cruel or inhuman treatment may not be used as a basis for the determination; and

(C) the lawfulness of the detention of such alien.

(5) TERMINATION ON RELEASE FROM CUSTODY.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit with respect to the claims of an alien under this subsection shall cease upon the release of such alien from the custody or control of the United States.

(6) EFFECTIVE DATE.—This subsection shall apply to any application or other action that is pending on or after the date of the enactment of this Act.

SA 2524. Mr. GRAHAM (for himself, Mr. LEVIN, and Mr. KYL) proposed an amendment to amendment SA 2515 proposed by Mr. GRAHAM (for himself, Mr. KYL, Mr. CHAMBLISS, and Mr. CORNYN) to the bill S. 1042, to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. ___. REVIEW OF STATUS OF DETAINEES.

(a) SUBMITTAL OF PROCEDURES FOR STATUS REVIEW OF DETAINEES AT GUANTANAMO BAY, CUBA.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees, and to the Committees on the Judiciary of the Senate and the House of Representatives, a report setting forth the procedures of the Combatant Status Review Tribunals and the noticed Administrative Review Boards in operation at Guantanamo Bay, Cuba, for determining the status of the detainees held at Guantanamo Bay.

(b) PROCEDURES.—The procedures submitted to Congress pursuant to subsection (a) shall, with respect to proceedings beginning after the date of the submittal of such procedures under that subsection, ensure that—

(1) in making a determination of status of any detainee under such procedures, a Combatant Status Review Tribunal or Administrative Review Board may not consider statements derived from persons that, as determined by such Tribunal or Board, by the preponderance of the evidence, were obtained with undue coercion; and

(2) the Designated Civilian Official shall be an officer of the United States Government whose appointment to office was made by the President, by and with the advice and consent of the Senate.

(c) REPORT ON MODIFICATION OF PROCEDURES.—The Secretary of Defense shall submit to the committees of Congress referred to in subsection (a) a report on any modification of the procedures submitted under subsection (a) not later than 60 days before the date on which such modification goes into effect.

(d) JUDICIAL REVIEW OF DETENTION OF ENEMY COMBATANTS.—

(1) IN GENERAL.—Section 2241 of title 28, United States Code, is amended by adding at the end the following:

''(e) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien outside the United States (as that term is defined in section 101(a)(38) of the Immigration and Naturalization Act (8 U.S.C. 1101(a)(38)) who is detained by the Department of Defense at Guantanamo Bay, Cuba.''.

(2) REVIEW OF DECISIONS OF COMBATANT STATUS REVIEW TRIBUNALS OF PROPRIETY OF DETENTION.—

(A) IN GENERAL.—Subject to subparagraphs (B), (C), and (D), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of any decision of a Designated Civilian Official described in subsection (b)(2) that an alien is properly detained as an enemy combatant.

(B) LIMITATION ON CLAIMS.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit under this paragraph shall be limited to claims brought by or on behalf of an alien—

(i) who is, at the time a request for review by such court is filed, detained by the Department of Defense at Guantanamo Bay, Cuba; and

(ii) for whom a Combatant Status Review Tribunal has been conducted, pursuant to applicable procedures specified by the Secretary of Defense.

(C) SCOPE OF REVIEW.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit on any claims with respect to an alien under this paragraph shall be limited to the consideration of—

(i) whether the status determination of the Combatant Status Review Tribunal with regard to such alien applied the correct standards and was consistent with the procedures specified by the Secretary of Defense for Combatant Status Review Tribunals (including the requirement that the conclusion of the Tribunal be supported by a preponderance of the evidence and allowing a rebuttable presumption in favor the Government's evidence); and

(ii) whether subjecting an alien enemy combatant to such standards and procedures is consistent with the Constitution and laws of the United States.

(D) TERMINATION ON RELEASE FROM CUSTODY.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit with respect to the claims of an alien under this paragraph shall cease upon the release of such alien from the custody of the Department of Defense.

(3) REVIEW OF FINAL DECISIONS OF MILITARY COMMISSIONS.—

(A) IN GENERAL.—Subject to subparagraphs (C) and (D), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of any final decision rendered pursuant to Military Commission Order No. 1, dated August 31, 2005 (or any successor military order).

(B) GRANT OF REVIEW.—Review under this paragraph—

(i) with respect to a capital case or a case in which the alien was sentenced to a term of imprisonment of 10 years or more, shall be as of right; or

(ii) with respect to any other case, shall be at the discretion of the United States Court of Appeals for the District of Columbia Circuit.

(C) LIMITATION ON APPEALS.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit under this paragraph shall be limited to an appeal brought by or on behalf of an alien—

(i) who was, at the time of the proceedings pursuant to the military order referred to in subparagraph (A), detained by the Department of Defense at Guantanamo Bay, Cuba; and

(ii) for whom a final decision has been rendered pursuant to such military order.

(D) SCOPE OF REVIEW.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit on an appeal of

a final decision with respect to an alien under this paragraph shall be limited to the consideration of—

(i) whether the final decision applied the correct standards and was consistent with the procedures specified in the military order referred to in subparagraph (A); and

(ii) whether subjecting an alien enemy combatant to such order is consistent with the Constitution and laws of the United States.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), this section shall take effect on the day after the date of the enactment of this Act.

(2) REVIEW OF COMBATANT STATUS TRIBUNAL AND MILITARY COMMISSION DECISIONS.—Paragraphs (2) and (3) of subsection (d) shall apply with respect to any claim whose review is governed by one of such paragraphs and that is pending on or after the date of the enactment of this Act.

AUTHORITIES FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. DOMENICI. Mr. President. I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Monday, November 14, 2005, at 11:30 a.m., on Implementing Legislation for the Agreement between the Government of the United States and the Government of the Russian Federation on the Conservation and Management of the Alaska-chukotka Polar Bear Population.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. DOMENICI. Mr. President. I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Monday, November 14, 2005, at 2:30 p.m., on the nominations of Thomas Rosch and William Kovacic to be Federal Trade Commissioners.

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

COMMITTEE ON FINANCE

Mr. DOMENICI. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet in open Executive Session on Monday, November 14, 2005, at 6 p.m., to consider an original bill that will include the Committee's budget reconciliation instructions pertaining to expiring tax provisions and also additional incentives for hurricane affected areas.

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

SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY, EXPORT AND TRADE PROMOTION

Mr. DOMENICI. Mr. President, I ask unanimous consent that the Subcommittee on International Economic Policy, Export and Trade Promotion be authorized to meet during the session of the Senate on Monday, November 14, 2005, at 3 p.m. to hold a hearing on U.S.-International Climate Change Approach: A Clean Technology Solution.

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

PRIVILEGES OF THE FLOOR

Mr. DOMENICI. Mr. President, I ask unanimous consent, on behalf of Senator FEINSTEIN, that floor privileges be granted to Josh Trapani, a legislative fellow in her office, for the duration of floor debate on the Energy and Water appropriations conference report.

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

Mr. DAYTON. I ask unanimous consent that Luke Ballman of my staff be granted the privilege of the floor for the remainder of the debate on this authorization bill.

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

ORDERS FOR TUESDAY, NOVEMBER 15, 2005

Mr. WARNER. Mr. President, I ask unanimous consent that when the Senate completes its business today the Senate stand in adjournment until 9:45 a.m., on Tuesday, November 15. 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 proceed to a period of morning business for up to 30 minutes, with the first 15 minutes under the control of the Democratic leader or his designee and the final 15 minutes under the control of the majority leader or his designee; further, that the Senate then resume consideration of S. 1042, the Defense authorization bill; I further ask that there then be 30 minutes of time equally divided between the Senator from Michigan and myself, between the bill managers, followed by a series of stacked votes as under the previous order; I further ask that there be 2 minutes equally divided prior to each vote; I further ask that following the vote on passage of the Defense bill, the Senate stand in recess until 2:15 p.m. to accommodate the weekly policy lunches.

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

PROGRAM

Mr. WARNER. Tomorrow the Senate will vote on final passage of the Defense authorization bill. Senators should note that we will have several votes starting at approximately 10:45. We have a lot to address this week and the majority leader reminds his colleagues to plan for many votes, late nights, and a longer than usual week.

ADJOURNMENT UNTIL 9:45 A.M. TOMORROW

Mr. WARNER. 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 8:21 p.m., adjourned until Tuesday, November 15, 2005 at 9:45 a.m.